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HEARING

SENATE RULES COMMITTEE

STATE OF CALIFORNIA

Legislature

STATE CAPITOL
ROOM 113
SACRAMENTO, CALIFORNIA

MONDAY, MAY 12, 1997
2:03 P.M.

SENATE RULES COMMITTEE

STATE OF CALIFORNIA

HEARING

STATE CAPITOL

ROOM 113

SACRAMENTO, CALIFORNIA

MONDAY, MAY 12, 1997

2:03 P.M.

Reported by

Evelyn J. Mizak
Shorthand Reporter

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APPEARANCES

MEMBERS PRESENT

SENATOR WILLIAM LOCKYER, Chair

SENATOR JOHN LEWIS, Vice Chair

SENATOR RUBEN AYALA

SENATOR JAMES BRULTE

SENATOR TERESA HUGHES

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

KEITH P. BISHOP, Commissioner
Department of Corporations

JAMES W. BRUNER, JR., Attorney
Orrick, Herrington & Sutcliff

LILLIAN JOSHUA, Complainant

D. STEVEN BLAKE, Attorney
Downey, Brand, Seymour & Rohwer

JO JOSHUA GODFREY, Complainant

SALLY R. REED, Director
Department of Motor Vehicles

ROSEMARY SHAHAN, President
Consumers for Auto Reliability and Safety

SPIKE HELMICK, Commissioner
California Highway Patrol

THOMAS F. KRANTZ, Member
Board of Governors
California Community Colleges

ROGER M. SCHRIMP, Member
Board of Governors
California Community Colleges

SENATOR DICK MONTEITH

MARINA M. TSE, Member
State Board of Eduation

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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN LOCKYER: We'll take up gubernatorial appointees where we left off, with Mr. Bishop. He has provided a rather lengthy response to some of the questions we posed. We haven't yet had an opportunity to go through his response, and the response to the response, and that sort of thing.

That will mean we can't go to a vote today on that appointment, but we want to make sure to conclude taking any testimony.

So, if there's anyone present that would wish to comment either for or against the confirmation of Mr. Bishop, I welcome them forward. If there isn't anyone, then we'll move on.

MS. JOSHUA: Good afternoon. My name is Lillian Joshua. I've come to share my experiences with you.

The Department of Corporations is failing in its regulatory function, and my family's experience illustrates that. And my own personal experience with SIGNA Health Care will illustrate how consumers are being abused, and how the Department of Corporations is turning a blind eye.

My experience with SIGNA began with the abuse of my parents, and in turn, they perpetrated this abuse against every member of my family. When I was sick and needed a physician, they would send me out on appointment, and I would be humiliated because most often, the physician where they sent me was not expecting me.

As a result, SIGNA sent me a letter saying that I

could choose my own physician and they would pay for the medical care. They did this once, and they didn't pay for the medical care, and I was threatened by collection agencies that I'd be sued if I didn't pay the bill.

SIGNA also said that I could choose a doctor of my choice in my place of residence, which is Santa Barbara, and this never happened. SIGNA assigned me a doctor in Santa Barbara, but when I was sick, and wanted to make an appointment, and I called the doctor, she never returned my calls. And when we contacted the doctor's office, they said that they didn't work with SIGNA any more because SIGNA wouldn't make referrals when specialists were needed.

Last year, I needed specialty care. And during the procedure, the doctor said that I had needed a biopsy. He had to stop in the middle of my treatment and get authorization from SIGNA to continue. The doctor stated that the two procedures were linked, and that he had never been expected to perform medicine in this way before.

After this procedure, when I complained to the Department of Corporations about this, SIGNA denied the accusations and responded that doctor was mistaken. So, they said that the doctor really didn't say this, that he made a mistake. And since then, the physician has come forth to his Senator's office in Santa Barbara and stated that he performed the biopsy without an authorization, and that my account of the incident was correct.

And the physician also said that every 90 days after the biopsy that I needed to go back and keep getting

checked every 90 days because this is a pre-cancerous condition. And SIGNA said that if I needed this specialty care, I had to go through my primary physician to be make sure that I needed it.

And they, in turn, assigned me to a primary physician that's located over an hour away from my house, and it's not even in my county.

I am a student. I go to UC Santa Barbara, and I don't have transportation. It's just not a viable option.

And the Department, instead of making things better, the person at SIGNA responsible for harassing me and not letting me get treatment, they told her to call me again, even though I advised him that this is the woman who was responsible for all my problems.

And I just wanted to say that my case is just one of many. There's been another person we just found out recently that has come forward to the Santa Barbara Senator that SIGNA has been doing the same things to.

Therefore, I urge that this department needs some kind of investigative body to see what's been going on. I think that to allow HMOs to continue to believe that they can abuse consumers without accountability is wrong.

And because of all these things that have happened, I feel like I have been forced to get medical treatment from the Student Health Center on campus. I have been paying all may bills for my treatment and my medication for several years.

And my question to you is, why should I have to do all this when I have medical insurance? And why should I

have to find my own medical care on campus instead of receiving the proper medical care that I thought I was paying for?

In closing, I feel that this is a profit driven system, and this profit driven system is not the way to deliver medical treatment to innocent and trusting human beings.

And I think that California needs to lead the way to change in order to protect its citizens. And the abusers are affecting every generation of Americans, and I think it needs to change before we step into the 21st Century.

CHAIRMAN LOCKYER: Did you have any interactions with the Department, separate from the Senator and the various plans? Did you complain to the Department about the problems?

MS. JOSHUA: I've written to the Department before, and I've just dealt with SIGNA. There's this one lady that keeps calling me and harassing me throughout my years at Santa Barbara. And I keep telling her -- when she called me, I told her that I didn't want to talk to her and not to contact me in that way anymore, and she just keeps calling me. She called me the other day, for example.

CHAIRMAN LOCKYER: Your personal experiences are with SIGNA mostly?

MS. JOSHUA: And the Department of Corporations, because when I've had my problems with SIGNA, I've written to the Department of Corporations, and nothing seems to get done about it.

CHAIRMAN LOCKYER: Did you ever hear back from them?

MS. JOSHUA: I did. My mom has all my

correspondence and all my letters. But it's just like a frustrating, ongoing battle, it seems. It's continued since I've been at school, four years.

SENATOR BRULTE: Your problem, again, about four years ago, are you familiar with any of the changes Mr. Bishop has made since he's been in his temporary capacity?

MS. JOSHUA: No, I haven't. I admit, I'm not familiar with those. I'm just basically going to school right now and trying to get my education and all I'm dealing with.

And my main problems are that when I'm sick, I can't get medical treatment. So, that's my main frustration.

SENATOR BRULTE: I'm sorry I missed first part of your testimony.

You're upset with your current provider, but are you here to oppose Mr. Bishop's confirmation?

MS. JOSHUA: Uh-huh.

SENATOR BRULTE: Even though you're unaware of any of the changes he has made?

MS. JOSHUA: My mom's been talking to me about it because I don't have time to come here and, like, read up on all this, and come to these hearings. So, my mom's been telling me, like, just what's been going on.

Just my correspondence with SIGNA and the Department. That's what I'm talking about.

SENATOR BRULTE: Thank you.

CHAIRMAN LOCKYER: Thank you.

MS. JOSHUA: Thank you.

CHAIRMAN LOCKYER: Is there anyone else?

MR. BRUNER: Thank you, Mr. Chairman, Senators. I'm Jim Bruner with the Orrick, Herrington and Sutcliffe law firm.

I'm here to support Mr. Bishop's confirmation. I'm pleased to be here to do so.

Over the years, we've worked with -- and I personally have worked with Corporations Commissioners, dating back to Willie Barnes, Franklin Tom, Christine Bender, Gary Mendoza, and now Mr. Bishop.

I've served with him on the Senate Commission on Corporate Governance, Shareholders Rights and Securities Transactions, and I appreciate your appointing me to that Commission two or three years ago.

In working with Mr. Bishop on a number of issues, it's become clear that he's highly qualified to serve as the Corporations Commissioner and continue serving in that regard. He's approachable, accessible, and we found him to be an honest regulator. We may not always agree with his positions or approach to certain problems, to certain policies, or to regulatory matters, but we found him to be intellectually honest and even handed.

I work generally with the Commissioner on matters affecting securities firms, investment companies or mutual funds, and found him to be one that's tackled tough problems in a forthright manner, and he's gained reputation and the respect nationwide for his ability to debate and provide foundation for his positions on matters where there's been a legitimate

difference on issues before the Department.

I think significantly in this period in which we've had a national markets act passed by Congress, and states are being called upon to conform their statutes to the national act to protect both consumers and those in the marketplace, that he's done a fair job in that regard. He has a bill before the Legislature now to provide conformity to the new federal statute.

CHAIRMAN LOCKYER: Which bill do you mean?

MR. BRUNER: It's AB 721, Senator, which is the conformity bill.

CHAIRMAN LOCKYER: Who's the author?

MR. BRUNER: It's Mr. Firestone.

CHAIRMAN LOCKYER: What does this conform to?

MR. BRUNER: The National Markets Act that was passed by Congress last year that provided for moving forward with a new set of regulation over mutual fund companies, for instance. There's now a national standard for compliance with state statutes and for offerings of mutual funds.

And heretofore, that's been regulated state by state, with a variety of states taking a different approach.

In that regard, we've worked with Commissioner Bishop, and we've found that he's not only acting diligently, he's ahead of a number of states in this regard, and he's coordinated his action with the National Association of Securities Commissioners, which I think is helpful to provide some type of coordination of a national standard.

On behalf of our firm and our clients, it's my

estimation that there's a public benefit from consistent and fair regulation. Consumers and businesses need to know what the rules are and how they're being applied. Commissioner Bishop has been accessible, fair, and clear in this regard.

I'd be glad to answer questions.

CHAIRMAN LOCKYER: Questions from Members?

Thank you.

SENATOR BRULTE: Let me ask, are you familiar with some of the changes Mr. Bishop has instituted, some of the staff he's hired to put an end to some of the backlogs?

MR. BRUNER: Well, I am familiar with some, especially on the securities side, far more so than on the health care service side. In fact, I'm not tremendously familiar with the health care service side.

I have followed his confirmation process, and I must say, on the securities side, he's hired good people; he's retained good people within the Department. They're responsive.

I think he's the type of person that is trying to do the best he can, certainly, with a high intellect and comprehensive program to address these problems.

SENATOR BRULTE: If you look at the Department prior to his tenure and where it is currently, would you say it's moving in the right direction?

MR. BRUNER: I don't think there's any doubt that it's moving in the right direction.

I really must say in my own personal estimation as a consumer on the health care side, it's a very, very

difficult time, whether you're a consumer, whether you're a regulator, whether you're, I presume, a health care provider. We're going through really a revolution in the way our services are delivered, and I would have to say that managing that system is a tall order.

I think he is moving in the right direction.

SENATOR BRULTE: Thank you.

CHAIRMAN LOCKYER: Thank you.

Is there anyone else? Yes, sir.

MR. BLAKE: My name is Steven Blake, and I'm pleased that you're willing to receive comments.

I'm a lawyer, but I consider myself more of a member of the public. I'm not a lobbyist. I'm not here on behalf of any clients.

I've been a business lawyer for about 26 years. I've been involved with County and State Bar matters, substantive law issues and subject matter.

Presently I am serving as co-chair of the Corporations Commission of the Business Law Section of the State Bar. And I am a former member of the Financial Institutions Committee of the Business Law Section of the State Bar, and an active member of the Board, and the Program Chair, and so forth, of local bar associations.

I've taught business law courses to lawyers --

CHAIRMAN LOCKYER: What do you want to tell us about --

MR. BLAKE: I want to tell them about Mr. Bishop

should be confirmed as Commissioner, because I can say that his experience as a practitioner before he came to public service, his forthcomingness, if there is such a word, with respect to the issues that I think are facing the small business people in California, the ability to readily raise capital, to document their transactions, and to grow their businesses, I think, would benefit from his approach.

Mr. Bishop has, in the short tenure, made a review of the some of the regulations under which business people in California must operate. He's rationalized some of them to modern practice. He has streamlined a number. He has relieved small business people of some really nutty restrictions from all the regulations. When stock was issued many years ago when the rules were different, wind up with restrictions that the same transaction today wouldn't have. He has by rule helped people out of those circumstances.

I believe that his interest in making California a better place for business formation is one of the reasons you should confirm his appointment.

I can say that, having been around State Bar substantive committees for about eight years, Mr. Bishop is the only Commissioner who ever bothered to send a senior staff person or show up himself to find out what practitioners in the business thought needed to be done to promote capital formation and the growing of businesses as California corporations.

You may not realize that there's quite an industry of reincorporating California businesses in other states because of many of the restrictions that California's law

and its regulatory, perceived regulatory web present to people.

Mr. Bishop has brought clarity to those rules and has made proposals that I think will streamline the process and ensure California's first place in the equity market.

I'd be glad to answer any questions, particularly general ones.

SENATOR BRULTE: What was your title with the State Bar Association?

MR. BLAKE: I have to say, make clear I'm here on my own behalf, not the State Bar by any means. But I'm co-chair of the Corporations Committee of the Business Law Section. Our purview, or special interest, if you will, is matters affecting corporations law, and securities, and practitioners and their clients in that regard.

SENATOR BRULTE: Again, looking at the Department prior to Mr. Bishop's tenure and where it is today, is he moving this Department in the right direction?

MR. BLAKE: I think it is for a couple of reasons I mentioned: rule making, making senior staff available and with ears open. And he has made an effort, I think, to reach out to business lawyers in general to let them know that the Commissioner's office is available for their clients who want to do business in California.

CHAIRMAN LOCKYER: Thank you, sir.

MR. BLAKE: Thank you.

CHAIRMAN LOCKYER: Is there anyone else who'd wish to comment at all? Yes, please.

Did you have a chance to talk with us last week?

MS. GODFREY: Yes, I did.

CHAIRMAN LOCKYER: Is there something new?

MS. GODFREY: Well, what I shared with you last week what had gone on in my life, I'd like to share with you what goes on inside this department today.

CHAIRMAN LOCKYER: This is additional, something new?

MS. GODFREY: Yes, I believe.

My HMO when they --

CHAIRMAN LOCKYER: You'd better identify yourself again.

MS. GODFREY: Excuse me. My name is Jo Joshua Godfrey.

My HMO, with what it did to me, it has promised to give me outside health care. And also, when I spoke with the Department of Corporations' representative on Good Friday, they said that, based on what SIGNA -- that SIGNA had made misrepresentations to the Department of Corporations about giving our family ongoing care. And that based on this, that she was even going to get involved in this issue.

I have not seen a doctor for eight months. I'm supposed to have blood tests every 90 days. They paid for me to be seen by an outside oncologist for two years.

CHAIRMAN LOCKYER: I'm sorry, but you've told us before the problems you have with the HMO.

MS. GODFREY: Right.

CHAIRMAN LOCKYER: Let's move on the to the Department, not the HMO.

MS. GODFREY: The Department said that it would intervene in this situation. I mean, if someone comes along and wrecks someone's life --

CHAIRMAN LOCKYER: Stay with the Department, please. Who did you communicate with in the Department? What did they say to you?

MS. GODFREY: Mr. Joe Parra.

CHAIRMAN LOCKYER: That was how long ago?

MS. GODFREY: And also Senator Knight communicated with him as well.

CHAIRMAN LOCKYER: Is this since last Monday?

MS. GODFREY: This was -- it's been going on for three weeks, but I haven't heard anything from them.

CHAIRMAN LOCKYER: Well, we've got a response. I don't know if in the response from Mr. Bishop it is specific to the different cases that we heard about here, but we'll ask that they respond specifically.

MS. GODFREY: All right, thank you.

CHAIRMAN LOCKYER: Thank you.

Anyone else that wanted to comment?

Mr. Bishop, do you want to come up? Good afternoon.

MR. BISHOP: Good afternoon, Mr. Chairman.

CHAIRMAN LOCKYER: I think we'll have another opportunity to have you available for interviews, I hope.

I think I'm going to recommend to the Governor that they withdraw the appointment for the time and resubmit it. The May 23rd deadline isn't going to work. I'm going to have to

vote no if that deadline is rigid.

So, the only way to avoid that problem, frankly, is if we get the Governor withdraw it and then resubmit it in a month, or something, so that we'll have an adequate opportunity to spend time on these issues.

Meanwhile, the only new thing, and you may have received this yourself, Jamie Court, again, with Consumers for Quality Care, comments on the recent announcement that Molina Medical would wish to merge with Universal, and Kaiser with Group Health of Puget Sound.

Have you gotten these?

MR. BISHOP: I have not seen that.

CHAIRMAN LOCKYER: I notice in reading through them, it indicates that you had approved material modifications for both companies that allowed them to expand during the previous year, even though Molina had been disallowed by the federal government, and there were other problems with Universal.

I want to only make sure to get this in our work loop so that you can make sure to respond to some of the issues raised, and to learn a little more about the material modifications that were already granted during the last year.

It's my understanding that at least one of the various options for restructuring of the Department of Corporations might include spinning off some of your functions that are business related functions to other departments or offices or agencies, and having you wind up being the Czar of HMOs.

If that's a possibility, I want some time to think about that before we do it, because there's been nothing but unanimous commendation for the business side of your Department's activities, and the criticism has all been in the HMO domain. If that's what you're going to be doing, I want to find that out before we confirm.

MR. BISHOP: Okay.

CHAIRMAN LOCKYER: So, we've got your responses from the previous week. We just need some time to go through those.

We'll reschedule it again for next Monday, if that's possible. But subject to hearing from the administration on a timetable, it may not be necessary, if they can take the nomination back for a time.

SENATOR BRULTE: Would that start the year clock again?

CHAIRMAN LOCKYER: No, it's like stop the clock on the last night of the Legislature. It stops the clock, but it starts again when they resubmit.

I'm just afraid that by May 23rd, we're not going to be able to -- it holds the deadline -- we're not going to be able to get --

SENATOR BRULTE: Would it be your intent, Senator, to keep Mr. Bishop at the Department, working, during that period of time?

CHAIRMAN LOCKYER: Yes. It doesn't change his work. It just stops the confirmation process.

It's not an exception. They've done these sort

of things before.

SENATOR BRULTE: Some of us like the changes Mr. Bishop is making. I don't want to send any signals to anyone in the world that we ought to undo what he's trying to do, because he's taking this in the right direction.

CHAIRMAN LOCKYER: Well, I agree there are positives.

The May Revise does not include any augmentation of the oversight budget, the enforcement budget. The Governor found an opportunity to spend a lot of money on a lot of other things, but no change in the HMO regulatory budget. That's a mistake, and that's one of many. Plus, how is this all going to change.

Frankly, I want to find out those things before we confirm.

If somebody wants to push a deadline, I'm a no vote. I'm happy to do that if it accommodates somebody's deadline.

So, let's get some responses if we could to those.

MR. BISHOP: Okay.

CHAIRMAN LOCKYER: I'll have staff check in with whoever you designate to understand the material modifications or approvals of change that were granted in the past.

MR. BISHOP: Okay.

SENATOR HUGHES: I have a question on procedure, just because I don't know it.

If he is resubmitted by the Governor, he's due to

be reappointed by the 23rd. Say the Governor does not bother to resubmit him until in 20th, then does he have a --

CHAIRMAN LOCKYER: He has to pull the name back, and it holds the year deadline. Then, when we're ready to go, they resubmit it, and we have a hearing; we have a vote. I mean, it happens real fast.

MS. MICHEL: At this point he has eleven days.

SENATOR HUGHES: Right.

MS. MICHEL: If the Governor were to pull his name today and resubmit it two weeks from now, he would still have eleven days.

SENATOR HUGHES: That's what I wanted to know. Thank you. You answered my question.

MR. BISHOP: We'll work on those responses.

CHAIRMAN LOCKYER: Thank you.

SENATOR BRULTE: Senator, is it possible to ask Consumers for Quality Care a question?

MS. MICHEL: He's not here. He couldn't fly up from L.A., but he'll be here next time when we do it.

CHAIRMAN LOCKYER: We'll have him available when we've got more information.

Thank you.

MR. BISHOP: Thank you.

CHAIRMAN LOCKYER: Moving along to appointees, I suggest we do Ms. Reed next, DMV, if that's agreeable with Members.

Come on up.

Good afternoon.

MS. REED: Good afternoon, Senator.

CHAIRMAN LOCKYER: It's customary, if you'd like to start with any kind of comments about yourself or your professional experiences, or this particular job, those are welcome.

MS. REED: Thank you, Senator. I do have just some very short comments. I'll keep them very brief.

I came to the Department of Motor Vehicles after 25 years of experience in government, 9 years in city government, 15 years in county government.

I've spent one year learning a lot about state government. I still have more to learn, but I've been very impressed with the quality of the department that I've been asked to head.

In my 25 years in government, I tried to stand for three things: integrity in government, fiscal responsibility, and respect for the individual employees who provide public service.

As your Director of DMV, I have sought to improve customer service, working with the field offices as well as those headquartered here in Sacramento, to assure that we do the best job possible with the resources we have. I've tried to stress attention to the customer who comes into our field offices, the individual customer, and also the business customer, the trucking industry, and so on.

I've also striven to move the Department toward a bias for action, and that's difficult in a department so heavily regulated and dealing with so many complex issues. We have

tried to move toward becoming more action oriented. We reorganized the Department along functional lines. We have worked to be sure that we provide as much attention as possible to the mission of the Department, and the mission as it changes through legislation passed in this body, which changes our responsibility each year.

I've worked hard to be sure the Department performs at its very peak level. I believe that means giving every employee the maximum support that we can, assuring that our employees are trained. Working to be sure that we provide them the tools -- simple things like manuals, more complicated things like the equipment that they need to do their job.

After 25 years' experience in government, I come to you as someone who believes very much in public service, who is challenged by the responsibilities of the Department of Motor Vehicles. I am working hard to make it a better department. It was a good department when I got there; I'd like to leave it a little better when I'm finished.

I'm available to answer any questions you may have on the challenges I've faced in the past year, or other challenges that I may face in the future.

Thank you.

CHAIRMAN LOCKYER: Thank you.

Senator Hughes.

SENATOR HUGHES: Yes, very nice to meet you.

I'd just like to ask you about a letter that Senator Solis sent you regarding her bill, SB 1717, which Governor Wilson signed on September 14th, '96.

MS. REED: Yes, ma'am.

SENATOR HUGHES: I'd like to know what your reply is about the fact that this bill, in the words of the bill, "on or before July 1, '97, the Department had to establish a procedure for receiving the mailed requests for extension of persons' driver's license as described in this section."

I don't know, will you have this procedure in place for July 1, and are you notifying people?

MS. REED: Yes, Senator, we will have the procedure in place by that time. We did respond in December to the Senator's letter. Unfortunately, perhaps -- or maybe it was January -- I think it must have gotten lost. We did provide another copy of that.

We are preparing to make that process by mail available, as the bill specifies, and in the timeframe specified.

The Senator expresses some concern that perhaps we should do that through regulation. Our attorneys advise that we have statutory authority to do it without regulation, so we don't see that necessity.

We have initiated -- we have forwarded another response to the Senator, and we'll work with her on any kind of notification that she would like to see. We had planned to simply include it in the regular notice that they get on the expiration time. But if more notice is required, we'll work with her on that.

SENATOR HUGHES: I would imagine a lot of people don't know about this. Even though I voted for bill, I didn't

know about this procedure.

And the thing that concerns Senator Solis is the fact that constituents will be standing in long lines and waiting, and just crowding the DMV offices, and they should stay home and just wait.

When you talk about mail, you said that you responded to the Senator back in September or sometime like that, and evidently she didn't get her mail, either.

What's going to happen with all of these people who are going to just invade your offices, and just crowd it up, and make your employees more tense and upset because they wonder how they're going to handle this volume? Are you going to have any public service announcements or anything like that to ease the flow of people coming to DMV?

MS. REED: We will certainly look at all of those options and work with her staff on that, and yours if you would like.

People do actually look for this particular notice, because for them, it is critical to get that extension. And they do have to bring it with them when they come into the office.

But we are certainly willing, if it looks like it would be effective, to use public service announcements or any tool to let people know.

SENATOR HUGHES: I would strongly urge you to do that. I haven't even discussed this with Senator Solis, but, you know, I know that people get really up-tight when they see that their licenses are going to expire, and they don't want to

be caught driving without a license that's updated.

So I think that you would save yourself a lot of trouble and a lot of work if you had some sort of announcement in that regard.

I will tell Senator Solis that you have agreed?

MS. REED: Certainly.

SENATOR HUGHES: Is that correct?

MS. REED: We will work on that, absolutely.

SENATOR HUGHES: Thank you.

SENATOR LEWIS: Senator Ayala.

SENATOR AYALA: Yes, Ms. Reed, what is a major risk involved in the implementation of the Warner Group's recommendations? And how will you as Director of the Department be able to minimize those risks.

MS. REED: It's a very good question, Senator.

The Warner Group made a series of recommendations following their analysis of the experience the Department had with the Tandem computers. At the heart of their recommendations were that we still needed to move forward to modernize the systems available in the Department, that we needed to do so in specific increments, and they proposed working through both the system components in terms of the data base, and also the software components of the system in a fairly orderly fashion, moving toward eventual replacement of the system, but as I say, in increments.

The greatest risk, I think, is that our system -- this will sound like a contradiction -- but it is at the same time a very good system that, over the years, has served us

well, and maybe better than most systems of its age. And at the same time, very much out dated.

We recently, based on the Warner Group's recommendation, issued two requests for proposals. One is called KSCS and one is called Untangling. They are the two major, though small in numbers by comparison to the past, computer system efforts that were in our budget last year, thanks to the Legislature's approval and the Governor's approval.

In both cases, the vendor -- we had single vendor respond, and in both cases, the cost to move forward as the Warner Group had recommended, was far exceeded by the specific proposals that we got. And the proposals did not accomplish everything the Warner Group had recommended.

I raise that as the greatest risk, because even with the Warner Group's careful analysis, and, I think, very cautious approach, we continue to find -- and perhaps it's in part due to the problems with Year 2000 and other legacy system problems and the demand out there -- that when vendors look at our system, and come in and try to help us move it forward, what they come back to us with are higher price tags, and only a portion of the work being done that we've asked for.

So, that continues to be the greatest challenge. Our system is a mystery. In some ways, I think people underestimate it. While it's extremely complex, and it takes us far too long to implement legislation that you folks pass, it works steadily, and it's kind of a work horse. And replacing it is going to be difficult, because when they get in and look at

it, they tell us the price tag is always much higher, and the effectiveness of what they can do far less than we'd expected.

SENATOR AYALA: Is the Polaroid contract problems that we had a couple years ago, is that behind us or still with us?

MS. REED: It's behind us, I think, in a sense, in the sense that we've had numerous rounds of negotiation with all the parties involved, both Polaroid and MBSI.

We are moving on a path now that, while it's probably not satisfactory to Polaroid in a way, it is the only course, I think, everyone would agree.

We are moving forward with a new RFP process, which is what MBSI sought to see us do. But at the same time, there is an appeal before the Appellate Court regarding our Polaroid contract, which we expect to see resolved in about September.

If the Appellate Court rules in Polaroid's favor, we have a binding contract that was signed 18 months, two years ago. If they rule against us, then the RFP will have been made available to all the vendors. We will have been able to review it, and we should be able to expeditiously award a new contract.

Litigation on these contracts has happened in this Department, as I recall, the last several times it's been bid, and is happening all around the country. So, I don't know that our problems are over, but at this point I think our course is one that is accepted by everyone as the only one we can take for now.

SENATOR AYALA: Thank you.

CHAIRMAN LOCKYER: I'm sorry I was interrupted a bit, but I wanted to make sure to ask or learn from you what thoughts you might have with respect to the contemplated budget deficit.

It's my understanding that rather than the balance projected last year of 25 million-plus, it's more like 50 million in the hole.

What's happening, and what can we do about all that?

MS. REED: Well, there are huge structural deficits in the MVA, in the Motor Vehicle Account, that are a product of a number of things. The revenues to the account do not grow with inflation, while the value of the vehicle reflects the dollars that we collect and send to cities and counties. The fixed amount that we collect on registration for the MVA doesn't grow with increased costs, nor do our driver's license fees.

Our costs grow, although they've grown slowly in state service with employee salary increases being rare, but our costs do grow. The demand for our services grow every year. And we have a number of programs within the MVA that are not traditional kind of traffic-transportation programs in the normal sense.

We have looked at all sorts of solutions to that. The one that seems to come most readily to people's minds is increase in the registration fee, putting a dollar on that, a couple of dollars on that. I've heard that actually bounced around to solve almost every problem in state government. It's

extremely popular.

As you know, the Governor has proposed some revamping of the driver's license fee. Philosophically, that is a very highly subsidized service we provide at the Department. It costs us far, far more to provide a driver's license to an individual than they pay to get it.

CHAIRMAN LOCKYER: What are those numbers?

MS. REED: I didn't bring them all with me, but as I recall, it's something like $60 or $70 the first time. That's when they take the picture and give you the test. You pay 12, I believe.

And it's less, of course, if you deal with us by mail, but it ranges. But in every case, it's a heavy subsidy.

So we put forward some proposals, and the Governor has included those in his budget, to significantly increase that fee, but to try to include it in a way that the penalty falls primarily, not exclusively, on the person who keeps coming back to us for service. The person who has their license suspended or whatever. Probably those people are more willing to pay us to get their license back, and we're spending a lot more to service those individuals. So, I think that's a piece of it.

But fundamentally, I think, we're going to have look at something that will provide revenue at some point when we know all the implications of 650 and everything, that will provide some growth in that revenue stream over time, and frankly, containing the uses of those dollars to services like the Highway Patrol, and hopefully our department, so that we can

bring in the money and match those up so that there's some chance of that staying in balance over time.

CHAIRMAN LOCKYER: And those might be realizable during these next few months.

MS. REED: I know that the Governor's Office is working hard on some long-range solutions, and we've heard that, frankly, from all the legislative committees in no unconcern terms.

My concern is this: 650's implementation, and what it's going to do to registration revenues is something we will not know in the next few months. I wish we would. It will be some time before we see how people react to that insurance requirement. And we made, at one time, some very significant revenue projections based on that.

I'm hopeful that won't happen, but it's very hard to tell, because it's a product both of how people react and what the value of their vehicles happens to be, and how that hits the revenue stream.

So, I think we'll have a lot of open questions, but I think we need to make progress.

CHAIRMAN LOCKYER: Is there anyone present who'd wish to comment for or against?

SENATOR LEWIS: I was intrigued by what you said about what the cost of process for driver's licenses are.

How much revenue do we receive annually from driver's license?

MS. REED: It's in my budget folder. I don't have it right here with me.

CHAIRMAN LOCKYER: This says -- go ahead, it doesn't say.

MS. REED: I'm thinking it's under 50 million, but I really want to get that number to you, because I have a whole file of budget stuff that I didn't bring over here.

SENATOR LEWIS: Do you have an approximation of how much we take in annually from vehicle license fees?

MS. REED: The vehicle license, at budget, the money we bring into the Department is 5.5 billion. Of that, over 3 billion of it, almost 4 billion of it, goes to local government, and that's the big ticket on your registration. That's what is the replacement for property tax, really.

The $27, I think, is about a billion, billion and a half.

We bring in a lot of money with our very good employees working hard to do it, but when it takes a blip, obviously, it's a big number.

CHAIRMAN LOCKYER: Comment?

MS. SHAHAN: Mr. Chairman and Members, thank you for this opportunity to speak in support of the nomination.

I'm Rosemary Shahan, President of Consumers for Auto Reliability and Safety. We're a grassroots, nonprofit organization that works on auto lemon and lemon laundering issues.

We've petitioned the Federal Trade Commission to look into lemon laundering, and they've agreed to do that. We're part of an ongoing negotiating group that includes state AGs, and the auto industry, and consumer groups, discussing a

possible federal rule.

I have to admit that at one time I was very skeptical about the DMV's ability and resolve to effectively enforce the Legislature's intent in passing laws prohibiting auto lemon laundering.

I have to say we've been very -- we're very appreciative of this stand that the DMV has taken in enforcing those statutes that affects consumer health and safety, as well as economic impacts on millions of Californians.

Thank you.

CHAIRMAN LOCKYER: Thank you.

Questions? No, we're okay. Thank you very much.

MR. HELMICK: Thank you, Mr. Chairman, Members. I am Spike Helmick, Commissioner of the California Highway Patrol. I'll keep my comments very brief.

I just would like to mention that Ms. Reed is a person of vision and a great deal of leadership. It's been indeed a pleasure this last year to work with her. Whenever there's been a problem with issues that DMV can assist law enforcement, she's been very receptive, willing to sit down with us on a very short notice. I've found it a very pleasant change.

And more importantly, I've been very impressed. She has one goal in mind, and that is, of course, to service the citizens of the state, which I think what we're all out here to do.

So, I would certainly ask that you give her

favorable consideration.

Thank you.

CHAIRMAN LOCKYER: Thank you, Spike. Questions?

Okay, I want to make sure that I've asked, again, in ways that I can understand, the DMV computer problem. What's your forecast as to eventual success, at what cost, and so on?

MS. REED: Let me say this. We will be extraordinarily careful. We will take every step toward moving the DMV to a modern level of computerization with a great deal of input from the Legislature, from all of the organizations, their control agencies.

I believe we are a number of years off, six, eight, maybe ten. I have recently hired a new CIO who's very ambitious and thinks we can do great things. I'm glad that he thinks that. I'm putting him in a room with all the cynics, and we're batting it around.

We are going to look at all of the possibilities. When we got bids this last time that were higher than we expected, we didn't even consider awarding a contract. We immediately went back to all the agencies and said, this is not what we told you we were going to buy for this amount of money. We paid our validation consultants that had been overseeing it. Not another dime was spent. That money will be rolled over.

Everything we do, we will do with a recognition that, frankly, the Tandem experience is a huge black eye for DMV that the Department doesn't fully deserve. And I want to turn that around, but I can only do that with great caution, and

frankly, a very slow but steady process toward the future.

CHAIRMAN LOCKYER: We all hope you are successful.

MS. REED: So do I.

CHAIRMAN LOCKYER: Other questions from Members? What's the pleasure of the committee?

SENATOR LEWIS: Move confirmation.

CHAIRMAN LOCKYER: We have a motion by Senator Lewis to recommend confirmation. Let's call the roll.

SECRETARY WEBB: Senator Ayala.

SENATOR AYALA: Aye.

SECRETARY WEBB: Ayala Aye. Senator Brulte.

SENATOR BRULTE: Aye.

SECRETARY WEBB: Brulte Aye. Senator Hughes.

SENATOR HUGHES: Aye.

SECRETARY WEBB: Hughes Aye. Senator Lewis.

SENATOR LEWIS: Aye.

SECRETARY WEBB: Lewis Aye. Senator Lockyer.

CHAIRMAN LOCKYER: Aye.

SECRETARY WEBB: Lockyer Aye. Five to zero.

MS. REED: Thank you very much.

CHAIRMAN LOCKYER: Thank you, and we wish you well and hope that you'll leave it a little better, significantly better.

MS. REED: I'm going to try very hard.

CHAIRMAN LOCKYER: Let's see, I guess we're at Mr. Kranz, the Board of Governors, California Community Colleges.

MR. KRANZ: Good afternoon, Senator.

I'm Thomas F. Kranz, K-r-a-n-z. It's a great pleasure to be before the Senator and the other Members.

CHAIRMAN LOCKYER: Thank you.

MR. KRANZ: And I would like to say, I have no written prepared statement, but I would like to say a few opening remarks.

First, it is indeed a great honor to be nominated for this position by the Governor, and I respectfully hope that I will be able to be as diligent as possible, because there is undoubtedly no higher priority in our state than education. The Constitution acknowledges that, and I think all of us from all over our great state recognize just how critical education is at all levels.

I would like to acknowledge the presence here of the Chancellor of our state colleges, Tom Nussbaum and the Vice Chancellor for Legislative Affairs, Gus Guichard, who I know many of you have worked with on regular basis. In the few short months that I have been sitting as a member, I've relied tremendously on their expertise, and it's been a pleasure to work with them.

I do want to be open for questions, but I just wanted to recognize my own background. I am a native Californian, grown up and born, educated in California. I've had the great opportunity to have degrees from two of the UC campuses, and a degree from one of our fine private universities.

But I recognize how critical the community

colleges are in our state. The so-called elite higher education is meaningless without a really quality community college system that reinforces what California has always been, in the forefront of education, of productivity, of technology, of fulfilling what is our future and what has been the heritage this state has given to the country and to the world.

I think more and more people recognize the great opportunity the community colleges present, and that is what I have the strong commitment to ensuring excellence at all levels, to continue that this is an open opportunity for everyone at all levels. And without the funding and the leadership in the college system, we short-change whatever advantages those students and graduates may have from those so-called elite schools, because they are only out in a long range distance compared to what has to be to be, that strong educated work force within our state.

I am willing and very eager to answer any questions any of you may have.

CHAIRMAN LOCKYER: Let me ask if there is any comment. Yes, Senator Hughes.

SENATOR HUGHES: I don't have a comment. I have a few questions.

Thank you very much for being with us today. I'm very impressed by your background. I think you probably bring great insight into this.

MR. KRANZ: Thank you.

SENATOR HUGHES: What is your perception of the role of the Board of Governors as compared to the role of the

local Boards of Trustees, and do you think that this role should remain as it is, or should it be changed or strengthened?

MR. KRANZ: Well, I think that's a good solid question, because as I understand it, this has been an area of contention in the past. And that has been the lack of a coordinated communication among the various districts. As I understand it, there's 71 districts, 106 individual colleges.

But under the Constitution, under the statutes of the state, they are under the authority of the Board of Governors. The Board of Governors has to require accountability, but there has to be some flexability to recognize that it's not within our power to micro-manage every district.

I'm an Angelino, as you are. And I'm certainly aware of our seven colleges in the L.A. district, and how much the elected representatives of that district have, just on a daily basis, of what they have to work with.

But the Board of Governors has to oversee this. They have to work with the leaders of the state, the Legislature, the Governor's Office, and the Chancellor system to try to ensure that's there's a uniformity of standards, both in accountability on direction and our regulations.

So, I think that this is changing. I think Chancellor Nussbaum has been an extraordinary leader, which I, in just the few months I've been there, have great admiration for what he's been able to do. And I think, from what I understand, there's a new spirit on the Board of Governors recognizing the need for a very close relationship between the

various districts and the Board.

But it's certainly one that I think has to be Monitored at all times.

SENATOR HUGHES: Mr. Kranz, could you tell me if the Community College Board has an ongoing working relationship with the State Board of Education to prepare K-12 students for college level work? And if not, should they?

MR. KRANZ: Well, as I understand it, we are certainly looking at that. The State commission on Higher Education has recommended along those lines. We had a retreat among the Board of Governors in Pasadena in February discussing this.

Our regular bi-monthly meetings begin this Wednesday and Thursday here in Sacramento, and we have the various legislative and separate committees to discuss this.

I know that in all of our meetings, we've had representatives from the secondary system as well as the other systems of higher education that attend regularly.

And nothing is more important than some form of standards and credibility as to how the students that are coming into the community colleges are prepared by the secondary system, because this is, as I understand it, one of the real areas of concern is, are they prepared to take advantage of the opportunities the community colleges offer, both in vocational and technology, as well as transferring on to four-year colleges. There has to be greater dialogue and working with the secondary systems.

SENATOR HUGHES: Is that one of your personal

goals?

MR. KRANZ: Being, as I mentioned, living and growing up in Los Angeles, I see it as critical, because that -- I feel we have a superb system of higher education in our state, but where we're lacking is some of the problems that occur in the secondary systems where we are losing -- in fact, the L.A. Times story today, a very in-depth article about some high schools have 20 to 25 percent admissions to the UCs, and others are below 4 percent. And that hits home with what we're talking about.

I think any Californian has to be concerned about this, because that leads to a path that could be very disconcerting for the future unless that's addressed in near future.

SENATOR HUGHES: Certainly, if we're working to create more employment in our state, we want to make certain that the employment force is ready, and able, and willing to go to work.

MR. KRANZ: Absolutely.

SENATOR HUGHES: Thank you.

How do you feel about the whole idea of student fees, and the fact that the financial aid for the community colleges has grown significantly over the last several years?

MR. KRANZ: Well, the community colleges are unique in one sense. They're really the last opportunity for so many students of all ages. And Senator Ayala asked me about this earlier today in a brief chance I had, and it was a pleasure having a chance to discuss this.

I feel, certainly the history shows when we had a $50 unit fee, I think we lost over 100,000 students who had to drop out or couldn't re-enroll. That affects the whole state, and that does not serve the state well.

If the cost of everything is going up, I know there's a need for more full-time faculty, but unless there's a critical need, that has to be last resort in the community colleges. It doesn't really serve what the purpose of the community colleges are in the Master Plan of Higher Education.

You recognize that certainly those in need should never be forced to do this. They are the ones that should be given the opportunity for jobs, part-time work, scholarship, federal and state aid.

I do not think that this is one that has to be pushed. I think if it is some form of fee system, if it is an absolute necessity that is incremental at the most minute way, and that was anticipated, and it can be documented over a long period of time so there's an expectancy, what would be the possible fees that would be imposed, but certainly not something horrendous like a $50 dollar unit because that can be catastrophic to a large number of the million-three, which will go up to a million-five in the not too distant future, students enrolled in the colleges.

So, I am not pushing fees in any respect. But I recognize that of all the higher systems, that the community colleges have to hold the line on open access as much as possible.

SENATOR HUGHES: Thank you very much.

SENATOR BRULTE: I just wanted to say, it was a privilege to work with Tom in Washington during the Reagan and Bush administrations, and I hope that doesn't hurt your chances for being confirmed today.

MR. KRANZ: Senator, thank you. I'm pleased you're in the Senate. I partisanly miss you in the Assembly, but I'm glad you're here.

CHAIRMAN LOCKYER: Was this the Army, the Defense Department, the National Security Council?

SENATOR BRULTE: We did it all.

CHAIRMAN LOCKYER: I know what you did.

SENATOR BRULTE: Tom worked for President Bush in the White House and worked over at the Pentagon.

MR. KRANZ: Right, under the Reagan administration.

CHAIRMAN LOCKYER: Mr. Kranz, I haven't worked with you, but I'm very, very impressed --

MR. KRANZ: Thank you, sir.

CHAIRMAN LOCKYER: -- by the vita.

You, it would seem to me, would be well qualified for any job that this Governor has to appoint people to. I'd be proud to move the motion to confirm you, unless there are other questions from Members.

SENATOR HUGHES: One last one. This is probably very easy for you to answer.

What do you think the role of community colleges should be in the implementation of welfare reform, the welfare reform that we are presently working on? The welfare reform

that we hope moves, but does not stall the budget this year?

MR. KRANZ: The committee meetings we have this Wednesday will be focusing on this. In fact, this is one that the Chancellor's office had prepared, Educating Welfare Recipients in California Community Colleges.

John Rice, a member of our board who's been a member for many years now, has made this a priority for the Board.

It is absolute -- it's a necessity that the colleges are involved in a major way, because both vocationally, job training, the new technology clusters that are centered -- there's one at Santa Monica College -- and the multi-media area, which is just getting off the ground. But this is a magnificent feat, used all over the state in our tremendous diversity of industry and product that we have.

And I think you recognize how many community colleges there are in the state. In just about every district, every community where you have this tremendous presence of entrepreneurial capital, as well as growth in every sector, they have to be that immediate center where this is utilized.

And there's a tremendous opportunity for the colleges to then use this training as a feeder into the state colleges and the UCs as this system evolves into a really healthy structure within the state.

So, I'm a great proponent of that, although I would defer that there are others on our Board of Governors who have made this -- they've been involved in this for awhile. I welcome that, because I think that it's going to be a challenge.

SENATOR HUGHES: With your wealth of experience, I hope you will assist us in helping us to reach our goal of having a workable welfare reform program, which we can put everybody to work.

MR. KRANZ: Well, I think that has to be the goal for our state.

SENATOR HUGHES: Thank you.

CHAIRMAN LOCKYER: Okay, we have a motion to confirm. Call the roll.

SECRETARY WEBB: Senator Ayala.

SENATOR AYALA: Aye.

SECRETARY WEBB: Ayala Aye. Senator Brulte.

SENATOR BRULTE: Aye.

SECRETARY WEBB: Brulte Aye. Senator Hughes.

SENATOR HUGHES: Aye.

SECRETARY WEBB: Hughes Aye. Senator Lewis.

SENATOR LEWIS: Aye.

SECRETARY WEBB: Lewis Aye. Senator Lockyer.

CHAIRMAN LOCKYER: Aye.

SECRETARY WEBB: Lockyer Aye. Five to zero.

CHAIRMAN LOCKYER: Thank you, good luck.

MR. KRANZ: Mr. Chairman, thank you.

CHAIRMAN LOCKYER: Thank you for your service.

Mr. Schrimp, good afternoon.

We want to ask you a lot about your dating service and other such matters. Apparently, that's the principle issue that's going to come up during your confirmation.

Senator Monteith, you're welcome to say something, if you'd wish to.

Do you know about his dating service? You should let us know that, too.

SENATOR MONTEITH: Just a short statement, please.

Roger Schrimp is a very capable individual.

CHAIRMAN LOCKYER: He's looking serious now. I started it that way, and I'd better say something quickly.

Just because you introduced a long-time friend of Senator Brulte to someone else, and they've announced their pending marriage.

MR. SCHRIMP: Oh, Diane. I did. I did that.

CHAIRMAN LOCKYER: At least he accepts responsibility for his misdeeds.

SENATOR BRULTE: I already moved to confirm.

CHAIRMAN LOCKYER: Senator Monteith.

SENATOR MONTEITH: That just goes to show that he has the ability to address tough situations, and he comes through with a smile.

And with that, I would ask for an Aye.

CHAIRMAN LOCKYER: Thank you, Senator.

Did you want to make any opening statements at all?

MR. SCHRIMP: Just very briefly that I also consider it a very high honor to have the opportunity to be appointed to this position.

I'm a graduate of what was than Stockton Junior

College. That's where I met my wife. And incidentally, I did introduce them. But then Diane went over to my wife to confirm everything I had said about the individual I was introducing her to.

Anyway, my wife serves on the Yosemite College Board, and I used to serve on a school board in the Oakdale area.

I'm very excited about this. I'm very interested in economic development, vocational education. I was fortunate enough to be named the chair of that. Hopefully, I'll get confirmed and can continue with my desires to help that system.

CHAIRMAN LOCKYER: Senator Hughes.

SENATOR HUGHES: From your background and your interest in economic development, what do you foresee in districts like mine, an inner city where a lot of businesses have closed, and there's not a lot of incentive or assistance in helping them to reopen and to start anew?

And we have a lot of people who are beginning entreprenuers that need a lot of assistance.

How will this background help you with the student population that you're going to be working with?

MR. SCHRIMP: Obviously, there are a number of different state agencies, along with the community colleges, who are concerned about doing exactly what you're speaking of.

Economic development means that, going out in the community and assisting the community in ideas, in concepts, in training programs. And now, as you know, service oriented jobs are very significant.

We need to get into the communities, offer our services, offer consultation. And then create our programs within the community colleges that will train people to fit the particular jobs that are available in those areas.

There are some good programs going on with El Camino right now, as you know, the services, right.

And we were at a meeting three or four weeks ago with the Manufacturing Council down there, which are in partnership with the community college, giving advice for some businesses for as little as $50 an hour, and others they charge up to $150, but they provide the technological support that these industries need so that they can get started and continuing growth.

We also, as you know, in San Diego have allowed small businesses to actually set up on the campuses themselves. And the school provides the assistance, advice, and things of that nature that they need for these small businesses to keep going.

SENATOR HUGHES: Will Mr. Brulte be easier to work with after this new merger?

SENATOR BRULTE: You don't want to go here, Senator.

[Laughter.]

SENATOR HUGHES: I just say that because sometimes he's difficult.

MR. SCHRIMP: I'd never heard that.

SENATOR HUGHES: Well, guarantee to me you'll introduce me to the lady so I can give her some cautious

advice.

MR. SCHRIMP: I will do that. She is a very lovely person.

SENATOR HUGHES: That's why I want to give her some cautious advice.

Thank you.

CHAIRMAN LOCKYER: Others? Senator Ayala.

SENATOR AYALA: I'd like to ask again what Senator Hughes asked the prior candidate. You're a product of the community college, I see. I just wondered about your views on student fees.

I think that fees should be obviously involved if possible, and if you have to raise the fees, that you should give the students opportunity to work them out if they don't have the means.

What are your views on that issue?

MR. SCHRIMP: We're open access, as you know. We're open for any person in California to come to the community colleges who has a high school degree or equivalent, or who qualifies for a particular program that we have.

A lot of people don't realize that we waive almost 30 percent of the fees already for students who do not have the financial wherewithal to go to community colleges.

My personal belief, and I can't speak for the Board in this issue, is that I hope these fees don't go any higher. But we are planning for the year 2005, and we are going to require a lot of additional funding. We're going to commit almost $50 million of Prop. 98 funds to welfare reform issues,

to deal with the things that we hope to do in that area.

But if there are ever going to be any fee increases, they're going to have to be minimal, and we're going to have to work out some fashion that allows the students, in some way, to be able to generate the increase, what they're looking for.

SENATOR AYALA: So, no one will be denied because of financial aid?

MR. SCHRIMP: Absolutely not.

SENATOR AYALA: Thank you.

SENATOR HUGHES: I'd like to move it.

CHAIRMAN LOCKYER: We have motion to confirm. Call the roll.

SECRETARY WEBB: Senator Ayala.

SENATOR AYALA: Aye.

SECRETARY WEBB: Ayala Aye. Senator Brulte. Senator Hughes.

SENATOR HUGHES: Aye.

SECRETARY WEBB: Hughes Aye. Senator Lewis. Senator Lockyer.

CHAIRMAN LOCKYER: Aye.

SECRETARY WEBB: Lockyer Aye.

CHAIRMAN LOCKYER: We'll hold it open for the other Senators to record.

[Thereafter, Senator Lewis and Senator Brulte voted Aye, making the final vote 5-0 for confirmation.]

CHAIRMAN LOCKYER: Thank you. Good luck, and we appreciate your public service.

MR. SCHRIMP: Thank you very much, sir.

CHAIRMAN LOCKYER: Members, we have a gubernatorial appointee to the State Board of Education. You may recall, we had a fairly lengthy hearing with her and another gentleman. The other person was confirmed at a previous meeting a week or two ago, and this is the remaining one, Marina Tse, State Board of Education.

Anyone? We didn't have her come in because she's been interviewed by us once before. She's a teacher at Duarte.

Any comment, or may I ask for a motion on the matter?

SENATOR HUGHES: So move.

CHAIRMAN LOCKYER: We have a motion to confirm. May I record the three of us that are present as voting Aye, and then leave that roll Open if the others wish to record.

[Thereafter, Senator Lewis and Senator Brulte voted Aye, and the final vote was 5-0 to confirm.]

[Thereupon. This portion of the Senate Rules Committee hearing was terminated at approximately 3:26 P.M.]

--ooOoo--

CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 14th day of May, 1997.

Evelyn J. Mizak

EVELYN J. MIZAK
Shorthand Reporter

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HEARING

SENATE RULES COMMITTEE

STATE OF CALIFORNIA

Legislature

STATE CAPITOL
ROOM 113
SACRAMENTO, CALIFORNIA

MONDAY, MAY 19, 1997
1:50 P.M.

SENATE RULES COMMITTEE

STATE OF CALIFORNIA

HEARING

STATE CAPITOL

ROOM 113

SACRAMENTO, CALIFORNIA

MONDAY, MAY 19, 1997

1:50 P.M.

Reported by

Evelyn J. Mizak
Shorthand Reporter

APPEARANCES

MEMBERS PRESENT

SENATOR WILLIAM LOCKYER, Chair

SENATOR JOHN LEWIS, Vice Chair

SENATOR RUBEN AYALA

SENATOR JAMES BRULTE

SENATOR TERESA HUGHES

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NANCY MICHEL, Consultant on Governor's Appointments

WADE TEASDALE, Consultant to Vice Chair

ALSO PRESENT

GEORGE M. GALAZA, Warden
California State Prison at Corcoran

FRANK R. SEARCY, President
Chicano Correctional Workers Association

ROY MABRY, State President
Association of Black Correctional Workers

RICHARD L. TATUM, State President
California Correctional Supervisors

JEFF THOMPSON
CCPOA

ROD NASON, Chapter President
Corcoran State Prison Chapter
CCPOA

WILLIAM M. PRUITT, Warden
California State Prison, Delano
Kern County Department

NATALIE J. ARENA, Member
State Board of Education

KEITH P. BISHOP, Commissioner
Department of Corporations

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--ooOoo--

SENATOR LEWIS: We are going to start as a subcommittee today. There are various legislative hearings that are making it difficult for us to achieve a quorum off the start.

What we are doing today is to begin with the Governor's appointees who are required to appear. We would like to begin with Mr. Galaza, Warden at Corcoran.

MR. GALAZA: Good afternoon.

SENATOR LEWIS: Welcome. Would you like to begin with any opening statements?

MR. GALAZA: Yes, I would. I'd like to thank the Committee for allowing me the opportunity to be here today to present my credentials as a warden at California State Prison at Corcoran.

I'd like to give you a little bit of a history of my resume and my experience within the Department of Corrections. Basically, I have been approximately 18 years with the Department of Corrections. I've worked at six different facilities in a variety of managerial and supervisory positions that have included captain positions, associate warden positions, chief deputy warden positions, and warden.

I was previously the warden at North Kern State Prison and transferred on October 22nd to California State Prison at Corcoran as the Warden.

SENATOR LEWIS: Thank you very much.

Let's open it up for anyone in the audience who

would wish to offer testimony at this time on behalf of Warden Galaza.

MR. SEARCY: Good afternoon, gentlemen. I am Frank R. Searcy, President of the Chicano Correctional Workers Association.

As Mr. Galaza has already explained to you his qualifications, we, the Chicano Correctional Workers Association, also feel that he is very, very well qualified and very well rounded experience for the position of warden.

We also spoke for him and supported his tendency at his last hearing when he was going for Warden at North Kern State Prison. And again, we feel honored to be able to repeat our role.

Again, without anything else, I'd like to again offer our support for Mr. Galaza as Warden at Corcoran State Prison. Thank you.

SENATOR LEWIS: Thank you very much.

Anyone else wishing to testify on behalf of Mr. Galaza?

MR. MABRY: Good afternoon. I'm Roy Mabry, the State President for ABCW, and the comments similar to Frank, we give George one hundred percent of our support, as we did the last time he was up for confirmation. He's a very well qualified candidate.

SENATOR LEWIS: All right, thank you very much.

MR. MABRY: You're welcome.

SENATOR LEWIS: Any further testimony in support, please come forward.

MR. TATUM: Good afternoon. I am Richard Tatum. I'm the State President of the California Correctional Supervisors Organization. We represent about 1500 supervisors in the California Department of Corrections.

This is a pleasure for me to speak up for Mr. Galaza. I've known him for a lot of years on an individual basis and worked with him.

Before we do these things, we do a lots of checking into how the chapter at that institution supports him. I think that everyone there is in support of him.

Like I say, this is not his first time go around as a warden. He did an excellent job the last time. I'd like to say that the chapter's supporting, and I personally support him. I think he's type of person that we need in these institutions to run them as far as ethics and ethical behavior, honesty, and those type of things that we need.

That's all I have.

SENATOR LEWIS: Thank you very much.

Any further testimony in favor of confirmation?

Is there anyone in the audience wishing to express concerns or in opposition to confirmation?

Warden, there have been some documented problems at Corcoran in the past. What's in current status of the various investigations you've looked into, those things that have occurred particularly at the SHU?

MR. GALAZA: Currently we have series of ongoing investigations at the prison. There have been a number of agencies that have been involved. Our own department, our

Special Services Unit, our own Internal Affairs within Corcoran Prison, the Federal Bureau of Investigation, Kings County Grand Jury, as well as other outside interested parties.

Currently, as I said, there are a number of investigations that are ongoing. Our Security Housing Unit continues to operate, and it's operating at this point very well, I believe. We've done a tremendous amount of work to maintain that unit in the fashion that we feel would make the Department and the Governor's Office, as well as the state, proud of it, and I think we've accomplished it.

SENATOR LEWIS: Have either the Grand Jury investigations, the Department of Justice investigations been concluded yet?

MR. GALAZA: No. We've heard nothing back from them as yet.

SENATOR LEWIS: In the wake of what did take place there, what reforms have you initiated or are attempting to initiate to try to deal with that?

MR. GALAZA: Well, certainly one of areas that we focused in very closely on, particularly on my date of arrival there in October, was on the issues relative to use of force. The primary focus was on the Security Housing Units, the SHU Units as they're reported to be. And what we did, to sum it up, was, we reviewed the operational plan which was the governing plan to run those units.

We revised where necessary. We clarified where necessary. We upgraded where necessary. We also provided a tremendous amount of training in the use of force techniques,

use of force practices, consistent with the Department of Corrections policies. That training was offered not just to staff in the Security Housing Unit, but to all staff in the prisons, since at any given point in time, any staff could work in there.

We also revised our in cell assault policies. For clarification, that basically sets the policy wherein, should there be an in cell assault, a cell fight, or some sort of other aggression within a cell, the policy does allow us to quell that problem, minimizing the possible exposure of risk, of fire or deadly fire of any sort to the inmate, and certainly minimizing the response time and, if possible, danger to staff.

SENATOR LEWIS: Thank you.

Senator Ayala, did you have any questions?

SENATOR AYALA: I believe that most of the problems that we heard about were not during your term of office or your watch. But there has been quite a bit of publicity on some of the inmate beatings at Corcoran.

On June 21st, 1995, a bus load of black inmates transferred from Calipatria State Prison to CSP, Corcoran. Was beaten as they were taken off the bus.

You were on watch at the time, on May 13 of '96?

MR. GALAZA: No, I was not at CSP Corcoran at that time.

SENATOR AYALA: Can you tell us what happened? How did this occur? Weren't these people protected or guarded as they arrived on the scene from Calipatria?

MR. GALAZA: Truly, a bus load of inmates from Calipatria Prison was transferred to Corcoran State Prison.

But I think at this point in time, we do have an ongoing investigation. It probably would be very presumptious of me to discuss the details of the situation at this point in time.

The Department is taking a firm look at it, has taken a firm hand in the matter. At this point in time, the investigations are ongoing. There's other issues that we're reviewing in terms of possible progressive discipline with that issue.

As I said, it'd be presumptious of me at this point in time to comment further on an ongoing investigation.

SENATOR AYALA: Action's has been taken to avoid that from happening again, of course.

MR. GALAZA: Certainly.

SENATOR AYALA: According to the Sacramento Bee, on May, 13th, 1996, an unusually large disciplinary action, associate warden, a captain, three lieutenants, and three sergeants have been fired for alleged beatings. In addition to these staff, this determination, more than a dozen other officers are facing disciplinary action, ranging from letters of reprimand to termination.

How could that happen? I don't quite understand how things could get out of hand so much. That was, again, before your term.

MR. GALAZA: Yes, Senator. You're absolutely correct, that was before my arrival at CSP Corcoran.

It's a little difficult for me to comment on the wheres and whys of how it may have happened.

One thing I can tell you is that in my tenure at Corcoran, since and through and forever forward, my type of management, my type of supervision certainly would be the type that would not foster possibility of having issues occur without management being very pro-active in the involvement, without management being very aware and very accountable of all issues.

SENATOR AYALA: On June 11th, 1995, according to an inmate letter, at about 1:00 P.M., staff in that building III-A shot at fire drill. They opened the cell doors and ordered inmates out. According to this letter, inmates were met by masked staff in military fatigues, wielding batons. Regular staff were also present.

Could you tell us how something like that could occur at a prison? Is this true?

MR. GALAZA: Well again, Senator, there is an ongoing investigation into such an allegation at this point in time; that is correct. And the Department is reviewing it, Special Services, Investigative Services Units, are looking at the matter, have reviewed, and at this point in time, we are awaiting the conclusion of it.

SENATOR AYALA: But the incident involving the inmates being transferred from Calipatria, has that be resolved? Has an investigation checked that out?

MR. GALAZA: Part of that has been resolved. You just spoke to the issue where at least one staff member was fired and others received various disciplinary actions.

Certainly, one portion of that issue has been resolved. The second portion, dealing with other associated staff, is still under review.

SENATOR AYALA: On that masked staff, did the Department ever recommend that on June 11th of '95, inmates were taken from their cells, and that masked correctional officers selectively beat black inmates? Have you investigated that one?

MR. GALAZA: At this point in time, there is an ongoing investigation. That is part of the allegations of the entire search pattern that occurred on that date.

SENATOR AYALA: I have a whole list of things that happened there, probably before your arrival. You and I went over this. The number of inmates killed by guards in the country. No other state except for Illinois has more than one. Illinois has two. Every other state, including Texas, has one, and most of them have none.

In California, we have 27 inmates that have been killed by other inmates or by law enforcement officers.

Can you tell us me why that is so high, 27 opposed to one in just about every other state in the country?

MR. GALAZA: Certainly, there may be a number of variables that contribute to that, not the least of which, of course, is the large inmate population that we have. We do have a fairly violent inmate population.

Certainly California, in the structure within the prisons, has accessibility to more weapons than perhaps some other facilities do throughout other states in California [sic].

I think again, I must say that it's certainly all of our responsibilities to minimize violence within the prison system. I believe that the Department's use of force policies work in that direction, and certainly it's warden's responsibility to carry those use of force responsibilities out and ensure that violence is held to an absolute minimum.

SENATOR AYALA: Why is this facility, along with the prison up north, Del Norte, why are these the most dangerous really for inmates and for staff members than all the others? We have 31, 32 prisons.

MR. GALAZA: Thirty-two.

SENATOR AYALA: Why are these, the highest incidents, happening at these prisons.

MR. GALAZA: Well, that's an interesting question. And to be sure, within the Department there are 32 prisons. And out of the 32 prisons, there are two prisons within the State of California that are designed to hold inmates where they have been unable to program at any other level. Those, of course, are Pelican Bay and California State Prison at Corcoran.

Throughout other states in the Union, they call those super max facilities, 37 throughout the entire Union, two of them in California.

We receive, as well as Pelican Bay, those inmates that have no program capabilities within any other general population in the prison.

In the Security Housing Unit, you do not have inmates being committed directly from the courts or being

received directly from a reception center unless they have assaulted either staff or other inmates.

So, what we have there is, right off the top, the potential for a greater level of violence due to the nature of the inmate that comes in. These inmates are failures within the system.

Also, another issue is that at Corcoran Prison, we program these inmates. Program meaning exercise on open yards within the Security Housing Unit. These yards are approximately 74 feet long, 35 feet wide, and pie shaped. We put up to 20 inmates on these yards. Certainly, we do everything possible in ensuring that those inmates that are placed in those exercise yards are not enemies. Certainly, we do everything possible to ensure that their placement on those yards is going to reflect the safety for each other.

But they do get into altercations, they do get into fights. Therefore, our level of violence, because of that type of programming, that type of yard, would certainly be higher than the rest of the system. And in actuality, we would have more occurrences of fights and altercations than Pelican Bay State Prison.

The design of Pelican Bay State Prison, in terms of exercise, allows for one perhaps two at the most out on a yard at any given point in time. Certainly, if you're out there by yourself, it's not likely you're going to get into a violent situation. If you're out there with another individual, it's more than likely your cellmate, and of course, to have a cellmate, you would have to have some compatibility purposes

going to begin with.

So, that might explain a bit of why, within the Security Housing Units, the potential for violence is higher than it is at other facilities.

SENATOR AYALA: The FBI's investigating your prison today. They're not through with their investigation?

MR. GALAZA: To the best of my knowledge, they are not.

SENATOR AYALA: The weapons policy for the Department of Corrections has been changed recently. What was it, and what is it today in terms of weapons by the correctional officers?

MR. GALAZA: Well, the changes in the weapons policies were changes that changed a few years ago, actually about three or four years ago, and they were relative to the issue of whether or not weapons are to be worn, given movement of inmates or staff, where weapons are to be worn, and at what point in times.

The actual policy within the Department of when to use -- and when I say weapon, I'm going to clarify it at this point in time by talking about lethal force -- when to use lethal force has not changed over the last number of years. And that is, that lethal force is authorized when there's a clear threat to life and limb of an individual or great property damage. So, that portion of it has not changed over a number of years.

What has changed, as I said, when to wear a weapon, when not to wear a weapon; slinging and nonslinging of

weapons, as well as clarifying other points within the shooting policy to make it a more viable, strong policy for the Department.

SENATOR AYALA: What is the population of Corcoran now?

MR. GALAZA: As of Friday, our population was 4,786 inmates.

SENATOR AYALA: And the design capacity is how much?

MR. GALAZA: Approximately 2470.

SENATOR AYALA: That 2400 is for single cells?

MR. GALAZA: Correct.

SENATOR AYALA: So, actually to double that, you wouldn't have any problem; would you?

MR. GALAZA: Well, doubling and having population above 100 percent certainly does present problems in terms of over crowding. It does increase the potential for violence and other issues such as that.

It does, of course, challenge us in terms of our support services, our education, and other aspects of our prison services.

SENATOR AYALA: What percentage of your inmates are minimum to high minimum custody?

MR. GALAZA: The percentage of inmates, well, I'll give you some actual numbers. We have approximately 470 inmates that are minimum custody inmates at Corcoran Prison.

SENATOR AYALA: So, about half are high risk?

MR. GALAZA: The majority of inmates that we have

there are medium custody, and then we have the maximum custody inmates within the Security Units and Administrative Segregation.

SENATOR AYALA: What have you done recently since you arrived to cope with the problem of over crowding? What can you do in terms of current design capacity?

MR. GALAZA: Well, the things that wardens have to do to cope with such issues, I think, are related to three watch words that I have, and certainly this doesn't sum up everything, but for me, this sums up a large part of it. And that's issues relative to professionalism, issues relative to integrity, and issues relative to accountability.

And what I mean by those three watch words are that it's critical that all the staff have those three elements, particularly when you're working under adverse situations with a relatively dangerous population, and even more so when you're in an over crowded population mode.

It's important that staff are as professional as they can possibly be within their work attitude. It's extremely important. And when I say staff, I mean from management all the way through rank and file.

It's extremely important that staff have integrity; integrity in assignment, and moral integrity within themselves.

And certainly last but not least, it's extremely important that there are systems of accountability that are built in within the institution.

And those are the three things that I have

continually strived to do since I've arrived there, and will continue to work with. I believe those three issues certainly will help minimize situations and problems relative to over crowding or to anything else.

SENATOR AYALA: Do you think the correctional officers are under trained to take those jobs?

MR. GALAZA: Under trained in their jobs?

SENATOR AYALA: Before they take the job, they should have more training?

MR. GALAZA: No, I don't think that correctional officers are under trained within their particular jobs or assignments. Training is an ongoing issue, and it's incumbent upon the management at institution -- and right now I'm not talking about the academy; I'm just talking about the institution -- it's incumbent that the management provide as much training opportunities as possible.

Also, training is an ongoing issue, so certainly there has to be built-in systems for ongoing training, refresher training, and as new policies and procedures come up, new training.

SENATOR AYALA: Do you have any thoughts about alternatives to incarceration? Everybody talks about that. Do you have any thoughts about that?

MR. GALAZA: In terms of alternatives to incarceration, be they probation, be they some other sort of system, I think California has done quite a bit in terms of alternatives to incarceration.

To be sure, it takes a lot to incur a state

prison term. If you look at the histories of the inmates that are within the California prisons, you will find, almost overwhelmingly, that these people have gone through a series of alternatives, a series of steps designed to lead them away from a destructive path leading to state prison. Numerous episodes of probation, numerous episodes in terms of halfway homes or other alternatives. Unfortunately, with a large number of them it, has not worked.

I think certainly whatever that we can do to minimize any segments of our population going into a state prison facility as a state and as a people, we should do. I agree with that, but certainly our inmates, for the overwhelming majority, have had opportunities in the past.

SENATOR AYALA: What steps have you taken since you arrived at Corcoran to improve that facility? According to what we read, that's the worst facility along with Del Norte in terms of safety for not only the inmates, but for the correctional officers as well.

What steps have you taken to make sure that what's been happening before doesn't continue to happen any more?

MR. GALAZA: The steps that I've taken have been relative to, as I said, the three words I mentioned, but accountability. Let's begin with accountability.

We have set up a system there where the management team, meaning myself, the deputy wardens, as well as the associate wardens, and captains and so forth, are apprised on a daily basis through a series of management reports of

exactly what occurred in that facility on the previous watches. We review these diligently each morning.

We also have briefings every morning, where all the executive staff -- meaning the staff I've just mentioned and others -- discuss the issues of the day as well as the issues of past watches.

We also have other accountability systems built into various components there. For instance, with incident reports, we have accountability systems built in that provide us with a daily review of all incident reports.

I personally review every piece of paper, every document, that crosses my desk. I do it for two reasons. One, I believe in leadership by example. And in leadership by example, certainly I have to demonstrate that I am accountable as a leader of that prison. So, I review everything there.

And I make my assignments accordingly. I make my assignments with the expectation that I do get a response, and I follow up on the responses.

I expect my management staff to have those same levels of accountability and to hold their staff and their supervisors equally accountable, as well as the supervisors to hold the rank and file equally accountable.

But again, all that would come to naught without some of the systems that we've initiated, some of the paper systems, some of the tracking systems, and some of the TIC systems within the facility.

Again, with training, whenever the opportunity presents itself, we -- we meaning the management team --

continually push the issue of professionalism. We continually push the issue of integrity.

We do everything possible when reviewing policy, when looking and making policy modifications or changes, to get the input from the staff that it affects the most, for who better knows what goes on on the line than the staff that work it. We take that. We review it in terms of departmental policy, and then make appropriate policy changes as needed.

That's an ongoing -- that's on an ongoing basis, on an ongoing issue.

I think that one of the things that we have to be very careful about is that we don't lock ourselves into a system thinking that this system is not an evolutionary system. Truly, Corrections is an evolutionary system, not the least of which is that you're dealing with people on a day-to-day basis, people whose temperaments change on a day-to-day basis.

But certainly as policies change, or as we see a better way to do business, a better way to make the prison safer for all concerned, a better way to make the prison a safety deterrent for the community, certainly we have to initiate those changes as we go along.

SENATOR AYALA: Thank you, sir. You've got a tough job. Good luck to you.

SENATOR LEWIS: Thank you, Senator.

Let's take this opportunity to establish a quorum. Secretary, please call the roll.

SECRETARY WEBB: Senator Ayala.

SENATOR AYALA: Aye.

SECRETARY WEBB: Ayala Aye. Senator Brulte.

SENATOR BRULTE: Aye.

SECRETARY WEBB: Brulte Aye. Senator Hughes.

SENATOR HUGHES: Here.

SECRETARY WEBB: Hughes here. Senator Lewis.

SENATOR LEWIS: Here.

SECRETARY WEBB: Lewis here. A quorum of four is present.

SENATOR LEWIS: Let's give anyone in the audience one more opportunity. Is there anyone here that would like to comment on this confirmation? Come forward, sir.

MR. THOMPSON: Thank you, Mr. Chairman, Members. Jeff Thompson with the California Peace Officers Association.

I apologize for not coming in at front end of the testimony.

We have met with Mr. Galaza concerning the ongoing concerns of Corcoran State Prison. We have with us today our Chapter President, Rod Nason, whom I'd like to ask to come forward just to give the perspective of the line officers there.

MR. NASON: I'm going to go ahead and read. I'm Rod Nason. I'm the Chapter President at Corcoran State Prison.

I'd like to say that Corcoran has been under fire for the last three years by alleged inmate abuse allegations and a barrage of media accounts. This has taken a large toll on managers along with rank and file staff.

This warden has and will have a tough job ahead of him. Besides the managing and administrative duties of a

multi-million dollar budget, he will have the task of rebuilding and healing staff morale.

At no time has a prison and its staff had to endure FBI, Department of Justice, DA investigations, county and federal grand juries, along with working with the state's worst and most violent criminals in the state.

Mr. Galaza, I would like to say labor and management will have disagreements, but it's my belief that we can work on common goals. Management and CCPOA do have an obligation to rebuild morale to bring a positive image -- and to bring a positive image back to Corcoran State Prison.

I could keep this distinguished Committee here for weeks, complaining about perceived unfair inequities that have befallen on our staff, but that is not why I'm here.

In meetings and conversation with Mr. Galaza, it is my belief that we have determined that we must work together. I have extended my hand and hope that we can bring back a positive work environment at Corcoran State Prison, the staff that really work the toughest beat in the state.

SENATOR LEWIS: Thank you very much.

What's the pleasure of the Committee?

SENATOR BRULTE: Move it.

SENATOR LEWIS: We have a motion. Call the roll.

SECRETARY WEBB: Senator Ayala.

SENATOR AYALA: Aye.

SECRETARY WEBB: Ayala Aye. Senator Brulte.

SENATOR BRULTE: Aye.

SECRETARY WEBB: Brulte Aye. Senator Hughes.

SENATOR HUGHES: Aye.

SECRETARY WEBB: Hughes Aye. Senator Lewis.

SENATOR LEWIS: Aye.

SECRETARY WEBB: Lewis Aye. Senator Lockyer. Four to zero.

[Later, Chairman Lockyer added his Aye vote, and the final vote was 5-0 for confirmation.]

SENATOR LEWIS: We'll move a call on that. Congratulations.

MR. GALAZA: Thank you, Members of the Committee, and please have a good day.

SENATOR LEWIS: Thank you.

We would now like to invite Mr. Pruitt, Warden of Delano, to please come forward.

Welcome, sir.

MR. PRUITT: Thank you, Mr. Chairman. I am Bill Pruitt, currently the Warden at North Kern State Prison.

You have my resume, but I would like to recap my managerial experience because I think it's important in running any institution in the State of California today.

I came to the state from the Los Angeles Police Department, having spent 25 years with that department. I came into state government at the agency level. I was Deputy Secretary in the Correctional Agency for three years.

I was subsequently appointed and the Chairman and member of the Youthful Offender Parole Board for four years, and I asked to go out into the field to learn more about the

correctional management of institutions so that, at least from a policy standpoint, I would know more about what is going on in Corrections today. And I have spent two years in CDC getting that experience, and I am very pleased to be here to entertain your questions.

SENATOR LEWIS: Thank you very much.

Any questions from Members of the Committee? Senator Ayala.

SENATOR AYALA: I'd like to ask Mr. Pruitt, what is the capacity over at where you're now located? What is the capacity in the prison itself.

MR. PRUITT: Right now the population is almost 200 percent of the design capacity, about 2850. I have about 5200 inmates in the institution right now.

SENATOR AYALA: You're using every cell, a single person per cell?

MR. PRUITT: That's correct. On a daily basis, I take a look at the number of available cells in the institution. We have over crowded the dorms.

We have -- the only room I have in my inn is in my Ad. Seg., because I need those beds to bring inmates in and out who have disciplinary problems.

This is a reception center also, so my population is very fluid.

SENATOR AYALA: What policy changes should be pursued to alleviate prison over crowding, in your opinion?

MR. PRUITT: Well, I think the last thing that we should try to do is to look for alternatives to not send people

to state prison, because we've looked at those; we've exhausted those.

We do have a shortage of Level II beds. And to the extent that our current classification system is based upon what we project as the institutional needs, I think we need to take a look at different types of designs, perhaps, that would allow us to bring in additional inmates at the proper level, maybe at a lower cost to the state.

Beyond that, I think that we're doing a commendable job in the mission that we're carrying out today. Beds for the future is something that will be based on population projections and other factors which would help us manage the prisons better.

SENATOR AYALA: You haven't had any problems like Corcoran and Del Norte, have you, in terms of inmates getting shot and killed, and officers being pushed around?

MR. PRUITT: Every institution in the state is faced with similar problems on a day-to-day basis. I have an Ad. Seg. Unit. I have Pelican Bay and Corcoran inmates going in and out of my institution, and on any particular day, I may have more endorsed prison gang members than perhaps Corcoran Prison in my Ad. Seg.

To the extent that as a manager I do not know what is going on, I do not get out front and manage those problems when inmates are going through my Administrative Segregation, certainly things could happen at North Kern similar to other institutions.

I think that having worked with Mr. Galaza,

you've heard of his philosophy. Well, Mr. Galaza was one of the individuals who helped train me in the CDC system, so proactive management is basically what new prison managers need to be involved with. If you don't manage the problem, the problem will manage you. It will embarrass the state, and it will cost the state a great deal of money.

The idea is, you need to know what is causing the problems, and you need to do whatever it takes to manage those so that they don't become problems.

SENATOR AYALA: I see where Mr. Galaza, he resigned. That's when you took his place, but he's moving over to Corcoran. Is that why he resigned?

MR. PRUITT: He was asked by the Governor to go to Corcoran at the same time that I was brought in as Warden to North Kern. So, he was at North Kern one day and Corcoran the next day.

SENATOR AYALA: Do you have any views on alternatives to incarceration? The over crowded conditions are probably the worst thing you could have in our prisons.

But other states have similar problems, and they don't have the amount of violence in terms of inmates getting shot and the correctional officers getting hurt.

I don't know why it is in California we have such high violence. Is it because we get all the people from other states, or what?

MR. PRUITT: The only issues or statements that I could add to Mr. Galaza's statements, that has to do with the variables that he mentioned.

In many states, correctional officers are not armed with the type of weapons that we are armed with in this state. The opportunity, perhaps, to not get involved in shooting incidents maybe aren't there.

But I think if you look at what has happened in some other states, for example, Oklahoma, where they're looking at their classification system to better manage their institution, because what they found was that many of the inmates who should have been classified as a higher level, at a higher level, were not. And they created significant security problems for the institution.

This state is looked toward by other states in terms of our sophisticated classification system. So, we do identify individuals who are going to commit murder inside prisons. They will do this regardless of where you put them, if you give them the opportunity.

And I think to the extent that we do not have more lethal situations is a testament to the quality of correctional officers, the line staff.

And it's a pretty thin line to walk into one of my dormitories and see that I have 200 beds in a 100 bed design facility, and see the thin number of staff that are there to deal with any problems. They can take over at any time that they want, but I think it's because of the way that we've managed the system.

We should look at California and be very proud of the fact that we do not have some of the problems that have been created.

I challenge any state with the numbers that we have to be able to manage their populations the same way that California has. We have a few problems. Some of those have been embarrassing to the Department, but I think very few of those have gone undetected by management. We have taken a proactive role to deal with those issues when they come up. And we will work with all staff to make sure that we minimize the opportunity in the future.

SENATOR AYALA: Statistics like the number of inmates killed by guards in the past five years: California 27; Texas none.

Doesn't that kind of bother some of you that are involved? Something's wrong some place. You say you have a little bit of problem. I think you've got a lot of problems, to be frank with you.

MR. PRUITT: Frankly, I cannot compare California's use of force policy with Texas's use of force policy.

We do review every incident in terms of lethal use of force, in terms of a formal review board to determine whether or not that incident was in policy or out of policy.

We also review other shootings, the nonlethal shootings, for the same purpose. To the extent that we find that we're outside of guidelines, we deal with those.

I challenge any other state that can manage the way California manages its prison population to do so without the use of force.

And to the extent that we do have lethal force

available, and it is justified under certain circumstances, I think we have to recognize that these are convicts who will take out a correctional officer or another individual, and they're at Pelican Bay because they have made it known, and they have done so. And to the extent that we have to save a life, I think we have to make sure that our staff are properly trained, that if you pull the trigger --

SENATOR AYALA: What is it you need to train your staff for?

MR. PRUITT: You need to be able to train the staff into the basics of when to shoot and not to shoot.

SENATOR AYALA: Common sense.

MR. PRUITT: Well, to some extent it is, but if you have several fights going down on your yard at the same time, and it appears that maybe half of those are fist fights, and one over in the corner is an inmate with a weapon, and he's attempting to stab another inmate, you're going to have to be able to, on a split second, make a decision as to who you're going to shoot.

And we don't always hit who we aim for. That's the problem in the system. We can only give training, and we can only tell staff that, when faced with the right set of circumstances, we're saying that you may shoot to stop the activity that is going on. And to the extent that some of our individuals do not -- have not been involved in any prior shootings, this is a first incident they may have been involved in, you may have some errors made.

But I think that the message that we send to the

violent criminals in our system is that we will deal with force upon other inmates and staff if we have to.

But I do not think, when I look at the volume of people and the number of violent criminals in our system, the number who have been classified as Level II, Level III, Level IV, that proportionately that California is not -- that California isn't doing what it needs to do in order to not only keep down number of shootings, but we're doing whatever we can do look beyond that to new technology, coming up with different ways of dealing with inmate violence.

And we're not dependent upon the gun to manage the disruptions in the institutions. We have various committees that review the technology as it is being developed. We have wardens who take a look at those new weapons. And I am positive that this Department is moving ahead to look to other alternatives.

SENATOR AYALA: The Department spends about $5-9 million a month on over-time. How does your prison rate? What is it costing the taxpayers in your prison for over-time?

MR. PRUITT: Senator, the amount of over-time that is spent at my institution varies. If you look --

SENATOR AYALA: I know that, but what's yours? I know it varies from prison to prison, but what is it in your prison?

MR. PRUITT: Well, the over-time, I can give you the amount each month that is spent on over-time.

SENATOR AYALA: Give the rough estimate on a monthly basis.

MR. PRUITT: A monthly basis for custody over-time, I'm spending approximately $150,000.

SENATOR AYALA: A month?

MR. PRUITT: Yes, sir.

SENATOR AYALA: Okay, thank you. I have no more questions, Mr. Chairman.

SENATOR LEWIS: Senator Hughes.

SENATOR HUGHES: What's your views on alternatives to incarceration, and which one do you feel is the most successful? If so, why so?

MR. PRUITT: Well, my views are that the state is doing quite a bit, both at the county level and the state level, to look for alternatives before state prison is utilized by the judges.

If you look at L.A. County and number of programs that divert individuals out of the state prison system, and to the extent that that county has brought considerable pressure on the Sheriff to, perhaps, send more people to state prison, I think what that is telling us is that we've pretty much maxed out some of our alternative programs.

To the extent that a great number of individuals come to the prison system because of drugs, and that number can be anywhere from 70-80 percent of inmates coming into the system have some form of drug problem, it is how do we divert those individuals into programs to not only prevent them from coming to prison, but to deal with recidivism when they are paroled? A great number of them are coming back for drug problems.

We do know that drug programs to be effective are

very expensive. That those programs which tend to track individuals for long periods of time after they leave the institution, that can bring them back into some form of program on the outside, can you continue to work with them in those programs? We know that those programs can be very successful.

SENATOR HUGHES: What percentage, would you think, of your inmate population are drug addicts? And what kind of rehab program do you have in your institution so that they're not having horrible withdrawal and other kinds of bizarre behaviors because of not utilizing drugs?

MR. PRUITT: I can only give you the overall statistics on drug use among inmates. And as I had indicated, it ranges anywhere from 70-80 percent of those coming to the system have significant drug problems.

Those that are actually addicted to narcotics, I can't give you a figure on that number. I would say that it's a significantly smaller number of the overall drug problems involved addicts.

What we do at North Kern is to take a look at how drugs are coming to the institution. I do have addicts in my general population. This is a Level III. These are the inmates who actually stay at the institution, although this is a reception center, and we program them to get out and try to be successful. They will get tar heroin in the mail that comes in. It will come in through visitors and possibly a few cases, hopefully very small number, through staff.

And to the extent that you can intercept those

drugs coming into the system, certainly you prevent another addict from getting a fix, but that doesn't change the fact that they're going to keep trying. And they're going to return to their addiction when they get out of the institution.

SENATOR HUGHES: You said they can get drugs through mail?

MR. PRUITT: That's correct.

SENATOR HUGHES: You don't inspect the mail that comes to your prison?

MR. PRUITT: We absolutely do. We fluoroscope the mail. We open the mail and look inside of the mail.

But to give you an example of how surreptitiously this is, is that in one particular Christmas card that came through, someone had cut the back side of the card open and had inserted a circular piece of tar heroin into that card and sealed it back up, so that you'd have to look very carefully on the scope in order to pick up this small dot of material. And to the extent that you have other printing and other drawings on the card, it makes it a little difficult to pick up, but we were successful in doing that.

We monitor telephone calls, and we overhear conversations between inmates, their spouses and friends conspiring to bring drugs into the institution. We use dogs to sniff out drugs, including the mail. So, we're doing quite a bit, but no matter what we do, it still gets into the institution.

SENATOR HUGHES: What is your policy, what do you do at your institution when you find a staff person involved at

any level in passing these drugs? What is the procedure?

MR. PRUITT: The procedure is to initiate an investigation, and at the closure of that investigation you determine, based on the amount of proof that's available, as to what action you're going to take.

The general penalty for this would be dismissal.

SENATOR HUGHES: I would imagine that these are all civil servants, and so they have a certain amount of protection, don't they, in terms of the civil service status? What is the hearing process?

MR. PRUITT: That's correct, and to give you a typical example, if I as a warden recommend dismissal of an individual, and it is concurred with with our Director, and that penalty is carried out. The individual the dismissed. He's entitled to a hearing before the State Personnel Board.

At that time, the individual can call in witnesses, be represented by his attorney or any other individual that he so chooses, and then it's a matter of the administrative law judge deciding, just like any other court on a matter of the weight of the evidence as to whether or not the Department's dismissal would be upheld.

SENATOR HUGHES: I understand there was a 1993 study that revealed that 65 percent of the inmate population had a literacy level below fifth grade reading. Of that, half the population, some of them were at actually at a fourth grade reading level.

What kinds of reading programs do you have at your institution, and how successful are they? And how do you

motivate your inmates to attend these?

MR. PRUITT: Well, we mandate that inmates either participate in work programs or education. And 92 percent of my population are doing either of the two.

If you do not read at the ninth grade level, you're mandatorily put into a class in order to improve your reading skills.

We have a literacy program that has been commended twice in the last two years for the quality of the program as far as being able to help the inmates improve upon their reading skills.

And I think if you go to one of these classes and hand out diplomas to the inmates, you really see sometimes for the first time that there's something that says to them that you can accomplish this. It helps their self-esteem.

And to the extent that we also train tutors in the program, we also set them up so that when they get out of the institution, that they can become involved in community-based programs to do the same thing.

Beyond that, we have the lifestyle program in which we not only deal with their literacy, writing problems, but we introduce everyday types of circumstances that an inmate would normally be involved in on the street, at the street level. How to go about applying for a job; how to apply for a driver's license; how to interview for a job; and how to set up your own housekeeping, create a budget, these types of things, so that it is more meaningful to them.

SENATOR HUGHES: How long is the waiting list to

get into your education program, say, a reading program?

MR. PRUITT: Right now, I do not believe that we have a waiting list for that program.

SENATOR HUGHES: How do you really motivate? Do you think that the average inmate would say, well I'd rather learn how to read than to go out and do manual labor.

How do you really motivate someone to go and learn how to read? It's kind of embarrassing to be adult and to admit to anyone that you really cannot read.

What is your staff responsibility, and what do you help them do, or assist them in to see that more of these people become literate?

MR. PRUITT: I think there are several things that we have done and will continue to do.

By using, in one of the classes, using inmates who have been taught to be tutors, I think the inmates in some cases are more receptive to one of their peers talking them into attending the program because they're not challenged in front of the rest of the class. You can go at the pace that the inmate is capable of moving forward with, so you don't have the competition that you're going to be left behind.

Some inmates need to spend more time than others, and especially if you have inmates who have a second language, and we're trying to teach them to read English. It becomes more of a challenge to do this.

So, we mandate that either you have a certain reading level, or you will sit in a class and go through your academic classroom work. And reading, of course, is only one of

them.

And the computer-aided program is another tool that we use because, to the extent that is interactive, it moves forward at the same pace as the inmate, he's again not pressured by a peer who's sitting there. It helps them to learn in a different way.

SENATOR HUGHES: Do you think computer programs themselves are self-motivating and intriguing to inmates who may have never had an experience with a computer before?

MR. PRUITT: Absolutely.

SENATOR HUGHES: Well, you know, how do you think CDC's work in education programs in general could be improved? If you were empowered to make some definitive, and you are empowered to make suggestions for the improvement of these programs, what suggestions would you make?

MR. PRUITT: Well, I think that to the extent that we can mandate that the inmates sit in the classroom sometime, that it helps to at least set a standard.

But I think the Department is spending a great deal of money with the educational programs that we have. And to be able to expand those, obviously, requires us to come back to the Legislature and say that we need to create some additional programs.

But I do think that computers may be under utilized to teach different skills. And since we are now involved in the Computers for Schools Program, we certainly can expand the number of automated programs we have within the Department to allow inmates, perhaps, to do more self-study, to

make modules available to them.

But to the extent that you create additional programs like this, you also create additional costs in custody staff having to supervise those programs.

I agree, we can do more. We can take advantage of more of the tools that are available to us today, but we certainly realize that they cost.

SENATOR HUGHES: Mr. Pruitt, you had indicated previously that sometimes other prisoners are the very ones that motivate another inmate to go and take courses in reading to help to improve their skills or other educational skills.

How do you screen or monitor the other skills that they might be sharing, the criminal skills? This has always been my great fear of having any friend or relative of mine sentenced to time in prison, that they might get more than the educational skills that they need to make it in the real world.

And do you have anyway of monitoring what one inmate teaches another one, maybe even under the guise of educational instruction?

MR. PRUITT: It goes back to my previous statement, that if you set up a particular program that might be somewhat dependent on inmates to also augment training, you have to have people monitoring the program.

SENATOR HUGHES: How do you know that another guy isn't helping his cellmate to learn how do you really hold up a bank successfully and not shed any blood, or how do you hide a weapon? How do you know they're really talking about the lesson

that they planned, or the work project that they're doing together?

Do you have any way to monitor?

MR. PRUITT: Only by close supervision, and that's the name of the game, is that inmates have to be closely supervised. You never let inmates take over to an extent that they have liberty to have any influence in an institution.

To the extent that they're motivated to be tutors, then we utilize them to tutor other inmates. But any program like this has to be closely supervised so that we know what is transpiring.

SENATOR HUGHES: Does that mean that you have to have somebody listening to them if you see them over in the corner of a room talking a lot? Are you sure that their conversation is productive or disruptive? How do you have eyes and ears everywhere? It's an impossible situation.

MR. PRUITT: Those conversations that you speak of take place every day inside of institutions. They happen on the yards. They happen inside of the cells with the cellmates. And they happen in any other grouping where inmates come together.

The reality is that they did do happen.

SENATOR HUGHES: In other words, you can't really stop them?

MR. PRUITT: To the extent that you are not in a position to overhear, or you intercept some correspondence going outside of the institution that would indicate that you have this type of activity, the higher level, for example, forming

conspiracies to commit crimes inside the institution, or when you get out, to form groups to continue crimes on the outside, you deal with that information.

But at the level that you're talking about, it is a reality. It goes on in every institution.

SENATOR HUGHES: Do you particularly monitor those inmates who demonstrate leadership ability, because you would know as well as anybody that there's some charismatic people who can often lead other people down the garden path, maybe not in the direction out of the institution, but in the direction how to get around in the institution.

Do your guards then come to you and say, well, I know Mr. Brulte is in cell H with Mr. Lockyer, and we need to watch them.

[Laughter.]

SENATOR HUGHES: No, I'm not being facetious. No, I'm just wondering, do you really watch these people who you know have leadership ability, and what kind of influence they might have on the other inmates? Especially someone who is younger and less experienced than some of the other inmates who are new comers to the area.

I'm really serious about this. This always concerns me about when a first-time offender goes to prison, how much real education are they going to get from other criminals?

MR. PRUITT: Well, the realities are, Senator, that it does happen. To the extent that you teach staff that you need to mingle with the inmates, you need to know what is going on, to the extent that there are inmates who will inform

on other inmates, it's a matter of communicating within the prison in order to control that kind of activity that you're speaking of.

SENATOR HUGHES: Do you give rewards to the people who rat on the others?

MR. PRUITT: Generally --

SENATOR HUGHES: I know there are rewards and punishments everywhere.

What kinds of incentives do you give people to bring you the information that you need, or you're not at liberty to tell? But there are incentives; are there not?

MR. PRUITT: Generally, that type of reward will come to one-on-one that you get from the correctional officer to the inmates.

To the extent in a there are inmates who provide substantial information on major crimes, there are other ways of dealing with them in terms of putting a laudatory report into their personnel file, so that when that C file is reviewed by the Board of Prison Terms, they have some way of seeing that this individual is making an effort to deal with criminal activity at his own level.

But you cannot -- you cannot have a quid pro quo type of situation where you are buying information, because then the inference becomes, are inmates manufacturing information for the purposes of developing a better relationship for themselves. So, there's a balance that we have to take.

But certainly, there's nothing wrong with commending an inmate in his C file for having brought forth

information that led to discovering these kinds of things going on.

SENATOR HUGHES: Thank you.

CHAIRMAN LOCKYER: Senator Ayala.

SENATOR AYALA: One more question.

Regarding the Man's Advisory Council, MAC, which is comprised of a group of inmates elected by a general inmate population vote, do these people get any special treatment like they do in the YTS? They call them juice wards, and they move around a little bit more than the regular rank and file population of the prison.

MR. PRUITT: No, they do not. To the extent that we rely on them on some occasions to communicate with the general inmate population, the most that we will do is provide them with access to those inmates so that they can get a message through relative to dealing with a threat of disruption in the institution.

We do not provide any special privileges to them. Many of them are given pay numbers for their full-time involvement in that program. But to the extent that they're also actively involved in reviewing, for example, the list of programs that are available to inmates, meeting with the inmates and coming back to management with some recommendations, what we try to teach is good government among the inmates.

To the extent that we all know that you have to give them some latitude, and you don't go overboard in rewarding them, it's basically a situation where we are very careful not to reward inmates.

SENATOR AYALA: I'm sure you're aware that the inmates accused of murdering that lady at YTS was a juice ward. He had access a lot of areas rank and file inmates didn't have. He was a convicted murderer.

You allow the group to select their own people, even though that may be the worst criminal in that institution to be a member of MAC? Don't you have any discretion who serves on that?

MR. PRUITT: Absolutely, and you find that some of your more influential inmates do not want to be put out front with MAC. Many of them are there because they have exceptional communications and writing skills, verbal.

SENATOR AYALA: Most of them are reluctant to accept that responsibility?

MR. PRUITT: That's correct. Many of what you would call inmates of influence do not want that.

To the extent that I as a warden must have a system in place to identify inmates who appear to be gaining the type of influence that you're talking about, having unlimited access, passes to go about the institution, then what I'm doing is mismanaging the inmate population. And I'm setting myself up to, perhaps, an inmate who's going to escape, or an inmate who's going to acquire information that will be detrimental to staff. And it's something that we all guard against.

SENATOR AYALA: At YTS Chino, the Superintendent selected this convicted murderer. He was accused of rape, too, but they dropped that because he was convicted of murder.

He had access to a lot of areas that the rank and

file inmates or wards don't have. That's how he happened to be at the place where he murdered this lady.

Why would anyone select a murderer, convicted murderer, of any leadership position?

MR. PRUITT: I would hope that that situation doesn't occur in the Department of Corrections. It hasn't occurred.

And I realize that your question is something that you know I don't have the answer to, but to the extent that we know that it has happened, and that as managers, we all need to take the lesson, reassess our own operations --

SENATOR AYALA: Do you have veto power over their selection? Do you as the warden have veto power over the selection of that --

MR. PRUITT: Absolutely.

SENATOR AYALA: -- member of MAC? Can you deny the people that the inmates want if you feel he's a risk?

MR. PRUITT: Absolutely. We not only do, but we have obligation to do so.

SENATOR AYALA: Thank you.

CHAIRMAN LOCKYER: Other questions from Members? Is there any opposition testimony present?

I know there are various associations and groups that are supportive. If there is no opposition present, I would ask the supporters to perhaps forbear and let us move our agenda along by soliciting a motion on confirmation, if Members are ready to move along.

SENATOR BRULTE: Move.

CHAIRMAN LOCKYER: Senator Brulte does enter that motion. Call did roll, if you would.

SECRETARY WEBB: Senator Ayala.

SENATOR AYALA: Aye.

SECRETARY WEBB: Ayala Aye. Senator Brulte.

SENATOR BRULTE: Aye.

SECRETARY WEBB: Brulte Aye. Senator Hughes.

SENATOR HUGHES: Aye.

SECRETARY WEBB: Hughes Aye. Senator Lewis. Senator Lockyer.

CHAIRMAN LOCKYER: Aye.

SECRETARY WEBB: Lockyer Aye. Four to zero.

CHAIRMAN LOCKYER: It's four to zero, and we'll leave it on call so that Senator Lewis can vote when he gets back.

Good luck, Warden. We wish you well and hope to not see you until you're reassigned to another prison.

MR. PRUITT: Thank you, Mr. Chairman.

CHAIRMAN LOCKYER: Thanks.

[Later, Senator Lewis added his Aye vote, making the final vote 5-0 for confirmation.]

CHAIRMAN LOCKYER: Is Galaza on call? Then add me and make it five zero.

[Thereupon the Rules Committee acted upon legislative items.]

CHAIRMAN LOCKYER: Natalie Arena, come on up. I point out that somehow we catch you student

representatives, since you're only appointed for one year, kind of toward the end of your term. It's almost an afterthought. It's not meant to be, because we want you to be confirmed.

MS. ARENA: I do, too.

CHAIRMAN LOCKYER: But this place is kind of like an airport, with the airplanes circling and waiting to land, and we don't get to them for several months.

You do go to Barstow High?

MS. ARENA: I'm a senior at Barstow High School.

CHAIRMAN LOCKYER: Then your term ends in August?

MS. ARENA: Actually July 31. Next month will be my last meeting.

CHAIRMAN LOCKYER: Do you know who your successor will be?

MS. ARENA: They're interviewing the final three finalists tomorrow.

CHAIRMAN LOCKYER: Welcome to an absolutely cooler part of the state today.

MS. ARENA: I agree.

CHAIRMAN LOCKYER: Any questions from Members?

I think it's not the same at the Board of Education. One term is all you get.

Did you enjoy it?

MS. ARENA: Very much so. It's been such a wonderful experience.

CHAIRMAN LOCKYER: What are you going to do next year?

MS. ARENA: I'll be going to the University of San Diego.

CHAIRMAN LOCKYER: Definitely a cooler climate.

MS. ARENA: Yes, much cooler than Barstow.

CHAIRMAN LOCKYER: I saw your School Superintendent last week when I happened to be in the Riverside area, and he had just come out of 118, I think it was.

MS. ARENA: Sounds about right.

SENATOR HUGHES: Ms. Arena, it must have been a wonderful experience.

What advice would you give to the next person that succeeds you on this board? What did you learn? Did you make any mistakes that you'd like this person not to make, or any other kind of advice would you give?

MS. ARENA: I don't know about mistakes, but I have thought about things that I wish I had known before I started out my term.

And the very first thing is, I don't know if you've ever seen our agenda. It's about this big. When I first got the agenda, and then all the supplemental material, and additional mailings, I was really overwhelmed, and I didn't know where to start. And I didn't really know how to decode the agenda.

So, that's what I'd show them how to do, is let them know what a consent calendar means, and what's routine, that sort of thing. Give them more of an idea of what they're jumping into.

SENATOR HUGHES: And you did, of course, say it's

not as overwhelming as you think?

MS. ARENA: No, it all fell into place after about two meetings. I finally got the hang of it.

SENATOR HUGHES: Thank you very much for serving.

I'd like to move this confirmation, if there's no objection.

CHAIRMAN LOCKYER: All right. Are there questions?

Okay, we have a motion by Senator Hughes to confirm. Why don't you call the roll.

SECRETARY WEBB: Senator Ayala.

SENATOR AYALA: Aye.

SECRETARY WEBB: Ayala Aye. Senator Brulte.

SENATOR BRULTE: Aye.

SECRETARY WEBB: Brulte Aye. Senator Hughes.

SENATOR HUGHES: Aye.

SECRETARY WEBB: Hughes Aye. Senator Lewis.

SENATOR LEWIS: Aye.

SECRETARY WEBB: Lewis Aye. Senator Lockyer.

CHAIRMAN LOCKYER: Aye.

SECRETARY WEBB: Lockyer Aye. Five to zero.

CHAIRMAN LOCKYER: Thank you, and thanks for your service. And good luck at least for the remainder of the term. We'll probably see you back on the regular board sometime in the future.

MS. ARENA: We'll see, thanks.

CHAIRMAN LOCKYER: Thank you.

[Thereupon the Rules Committee

acted upon other agenda items.]

CHAIRMAN LOCKYER: We've got another major item to deal with, which is Mr. Bishop's confirmation.

When the meeting began an hour and a half ago, I think it was our intention to deny confirmation. And the principle reason for that are the inadequate performance of the Department with respect to regulating health plans and HMOs in California.

Now I have just been handed a press release from the Governor's Office appointing an ombudsperson for the Department, which is at least one of the issues that was a problem.

And so, we have until the 23rd, Thursday. I'd suggest we should hold this to a Rules meeting off the Floor just before the session so we'll have a chance to reevaluate the latest developments. If that's agreeable, we'll hold that until Thursday morning for those that have an interest in that issue.

[Thereupon. This portion of the Senate Rules Committee hearing was terminated at approximately 3:38 P.M.]

--ooOoo--

CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 21st day of May, 1997.

Evelyn J. Mizak

EVELYN J. MIZAK
Shorthand Reporter

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10:23 A.M.

SENATE RULES COMMITTEE

STATE OF CALIFORNIA

HEARING

STATE CAPITOL

ROOM 3191

SACRAMENTO, CALIFORNIA

THURSDAY, MAY 22, 1997

10:23 A.M.

Reported by

Evelyn J. Mizak
Shorthand Reporter

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SENATOR JOHN LEWIS, Vice Chair

SENATOR RUBEN AYALA

SENATOR JAMES BRULTE

SENATOR TERESA HUGHES

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NANCY MICHEL, Consultant on Governor's Appointments

WADE TEASDALE, Consultant to Vice Chair

ALSO PRESENT

KEITH P. BISHOP, Commissioner
Department of Corporations

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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN LOCKYER: Mr. Bishop, come on up, if you would.

Mr. Bishop, thank you for enduring a rather lengthy confirmation process. There's been considerable public discussion, so I don't know that it's necessary to add to that.

There are a few issues that Members, during the course of the last couple of weeks, have inquired about or commented on. So, I think it maybe would be helpful just to clarify those.

He can certainly speak for himself, but one that Senator Ayala and I both were trying to figure out the correct chronology has to do with some of the fines and various penalties levied against health plans that were not in compliance with the regs or law.

There was a suggestion, I think it was by some reporter or maybe one of the critics, I'm not sure which, that you were kind of taking credit for what the prior Commissioners might have laid the foundation for or done with respect to fines.

It was confusing, and so I thought I'd ask you for a little clearer explanation of those matters, how your record compares, your own record with respect to these matters, how it would compare to prior, your predecessors?

MR. BISHOP: I certainly don't want to take credit for anything that's not -- should be mine.

My record, I believe, is that I have levied more

money and collected more money in fines than any previous Commissioner in terms of health care plans.

The one issue I think in particular that raised the question was the case of Carly Christie. That was a case that was initiated by former Commissioner Mendoza. He left before the case came to conclusion.

When I come on board, the administrative law judge rendered her proposed decision, and then it was up to me to either accept that decision or reject it.

At that point, I reviewed the complete record and decided to sustain the ALJ's decision, in which case then there was a lot of press, obviously, accompanied with that decision which -- it did occur on my watch.

SENATOR AYALA: Is that the only time that that occurred, where something came to fruition during your term that was initiated before your term?

MR. BISHOP: I'm sure there are many things that carried over, but in terms of -- including enforcement matters -- but many of the enforcement matters that I have levied fines on were all initiated under my term, including the fines against 80 plans for violation of the 1-800 number disclosure. The recent action against Western Dental was all investigated and the action was filed --

SENATOR AYALA: You may recall in my office, you said just what you just said now, that you have collected more as a result of lawsuits from people out there breaking the law than all the other directors combined.

MR. BISHOP: For the last ten years.

SENATOR AYALA: Then in Rules Committee, someone says, sure but he didn't initiate any of them. And you didn't respond to that.

MR. BISHOP: Well, I initiated 80 actions for the 1-800 number, and collected over $600,000. I initiated an action against Blue Cross and collected $100,000 on that, and recently initiated an action against Western Dental for -- and we haven't won that one yet -- but it's seeking $3 million. All of those were --

SENATOR AYALA: I kind of felt that you didn't lie to me, but you didn't tell me the whole story, either.

You might have collected more than anybody else, but how many of those did you initiate?

MR. BISHOP: I think even of the ones that started, it's more than everybody else.

SENATOR AYALA: There's some misinformation out there someplace.

MR. BISHOP: Today, I can tell you that there's more than twice the number of open enforcement cases than there were a year ago.

CHAIRMAN LOCKYER: Does open mean you can't get to them?

MR. BISHOP: No. They're open, and we've started them.

SENATOR AYALA: The perception is that you're not collecting or fining them enough. That's the perception. Whether it's true or not, sometimes perceptions can be stronger than the truth, I think.

MR. BISHOP: I think the facts are that I have been very aggressive in bringing actions against plans, and have brought more actions and collected more money under my watch.

SENATOR BRULTE: Mr. Bishop, some of your critics have suggested that some of these actions were initiated, but the decisions, you are contending the decisions were made on your watch? You had the authority to make the decision?

MR. BISHOP: The 800 number cases --

SENATOR BRULTE: Not the ones you initiated.

On those that you did not initiate, ultimately, when the administrative law judge made their finding, you could have sustained it or rejected it?

MR. BISHOP: Correct.

SENATOR BRULTE: And your critics aren't giving you any credit for sustaining that. They're simply suggesting that you didn't initiate it.

Let me just ask you a question. If you had rejected the administrative law judge's rulings, do you think your critics would have said that the previous commissioners were responsible for that?

MR. BISHOP: No.

I'd also like to just point out that in making that decision, I had to look at the full record. And I did not simply accept a decision without a comprehensive review of the record, which included reading 20 volumes of testimony on that case.

SENATOR AYALA: I have another question that's maybe not a fair question to ask you, but do you think that the

HMOs are under the right division of government, Department of Corporations? Should they be with the Department of Consumer Affairs of somewhere else?

Why is it under the Department of Corporations when it's a health problem?

MR. BISHOP: I think it is under the right division of government.

But I think the question really should be, how should government regulate health plans? And that will lead you to what department or division of government should regulate it.

The decision to put it in the Department of Corporations was made in 1975 by the Legislature. I think it was based upon the strong concerns at the time about the economic viability of health plans.

SENATOR AYALA: Thank you.

CHAIRMAN LOCKYER: Well, I only wanted to mention with respect to the appointment of the ombudsperson, I think that there's a considerable agreement about the need to fill that position.

I have yet to hear anyone in the consumer advocacy world say anything complimentary about this particular choice. So, I don't know Mr. Parra. I can see why someone would worry because he was an employee of the Hospital Association, and there might be a belief that he will not be an active consumer advocate.

I hope you have an understanding with him about the nature of his job and what the responsibilities entail with respect to that role. If there's anything you can tell us about

that that would clarifying, that might be helpful.

MR. BISHOP: Yes, I have worked with Mr. Parra for the last year. And he is -- and observed him in the 1-800 number process. He has been really the person who has trouble-shooted many of the problems that I've identified with the operation of our Consumer Services Unit and the 1-800 number.

I've also observed Mr. Parra in dealing with individual consumers, and I know that he has a great deal of concern, respect and understanding for the needs of consumers in this process.

And there is simply no person in the State of California today who knows more about our 800 number than Joe Parra. There's no one in the State of California today who knows more about the operation of our 800 number than Joe Parra.

And I have complete confidence in him to serve the needs of Californians in accessing the Department of Corporations' 1-800 number in the complaint processes.

CHAIRMAN LOCKYER: So, in terms of the responsibilities of the ombudsperson, it's your view that he understands and is sympathetic to the role as a consumer advocate?

MR. BISHOP: I've seen it in action already, and I've had many, many conversations over the last several weeks with him about his role as ombudsperson. And I think it's really important that he will be helping people negotiate what can be sometimes a complicated and confusing process.

CHAIRMAN LOCKYER: In that respect, one of the things that sort of comes up regularly is, people feeling like

because the confidentiality of records prevents them from reviewing a file, their own file, they feel frustrated about not understanding why there was a decision made to close the file, or to prosecute, or whatever.

It may well be that we need to all think a bit about that law and try to help at least, if nothing else, explain to consumers why it is that you think it's in their best interests to not have a whole file released, or whatever. I hope we can continue to talk about that.

MR. BISHOP: I would look forward to doing that. There are a number of competing concerns at work, and it's -- you know, balancing those concerns is sometimes difficult.

CHAIRMAN LOCKYER: I understand. You mentioned those before.

The other issue, just to mention, is the notion of having timely public hearings on significant material changes. I know you've made a commitment, and you've already begun to do those more routinely than had been done in the past. I simply continue to encourage you to do that.

I'm tending to vote for your confirmation. I think you have tried to manage a department with multiple responsibilities that often are very difficult in a conscientious way. And I appreciate your being so forthcoming with Members of the Legislature in helping us understand these responsibilities, and how your Department works.

So, I wish you well.

SENATOR HUGHES: I have a question.

As you continue on with your difficult task, what

are your immediate plans for unraveling the very complicated process that you could tell us succinctly now?

MR. BISHOP: I think the appointment of Joe Parra is real important to getting consumers better educated about the role of the Department in handling complaints. That's one area I view as a very important part of his new job, which is explaining what we do, and explaining how to access and use us successfully.

And I think that getting the 1-800 number out there, getting the consumers to recognize the Department as a resource to them is very key.

Another area is getting more information out, and we've got a Web page now, and I will want to upgrade that. We've got our complaint form on the Web page now for consumers to get information, both about how to file complaints and also about plans.

I have a hearing next week on a dental quality of care issue. It's a public hearing down in Los Angeles. And that's an area that's been of great concern to me, because many consumers have had problems with their dental -- with certain of their dental providers.

SENATOR HUGHES: How do you handle those consumers who are so very, very frustrated that they feel an 1-800 number merely delays their request? How are you going to advise them? Because some individuals have indicated that they've called this 800 number many times and received no personal satisfaction, and they don't like being automated.

What suggestions would you give to Mr. Parra?

We're talking about health care; we're talking about a person's life, unlike whether you're going to fix my car that was damaged or something like that.

How do you get the human element, or how do you perceive of getting the human element taken care of in your system?

MR. BISHOP: It's -- I think having the ombudsperson will help address that human element. We do get thousands of calls. Since we initiated our enforcement action, the number of calls that have come into our 1-800 number about doubled. They went from 3,000-plus to just about 7,000-plus in February. So, as our word gets out there about the 1-800 number, we're getting more and more calls.

Joe obviously will be helpful in addressing the cases where people are having problems with the system.

The resources that I've been working on adding to speed up the time -- I think a lot of the frustration, at least in my estimation, has been that the process has taken too long. That's why, over the last year, I've worked to speed up the process by getting additional medical consultants. We have more than -- we've got a 700 percent increase in medical consultants available to us today.

Shortening the time for plans to respond to complaints, I've also talked to many, many of the CEOs of the large health plans and told them that this is the grievance process, and the complaint process is a very, very high priority with me. And that they need to understand that the process does take too long, and we all have to work, both the DOC and the

plans, to speeding up the process.

Some of it's mechanical, like putting in high speed FAX machines, which we've done to FAX the information back and forth to the plans. Shortening the time period. Getting more experts available to us, more legal counsel.

And we've succeeded. We've cut the backlog by 75 percent. We're still not where we should be because there's still a number of complaints that are over of 60 days old.

SENATOR HUGHES: But the problem I see here is that we're not talking about having your car fixed, your car that was damaged.

We're talking about having your body fixed so that your body is able to function. And we're talking about, in many cases, preserving the quality of life that people have left.

So, I don't know how you deal with that kind of pressure compassionately.

MR. BISHOP: That is, I think, an important aspect because it is, as you say, people's health is very fundamental to their whole life. It's something that I recognize every day when I read the complaints.

I believe my staff does feel that commitment. In talking to them, they recognize that these are real people, that they can't wait around forever to find out an answer to their problem. If it's, say, a problem without a network coverage, most people can't afford, you know, 120-day turnaround in getting that claim paid because they don't have the money otherwise.

So, I think there is that understanding within the staff of the Consumer Services Unit.

But we are dealing with thousands of calls every month and hundreds of complaints.

SENATOR HUGHES: Thank you.

CHAIRMAN LOCKYER: Mr. Bishop, there's just one example, just for purposes of the record, that I'll cite. We've had a number of communications of this sort.

This is from a family in Norco. I think that's Senator Ayala's domain. No, it's in Senator Haynes' district.

Anyhow, the family writes to you last November. You respond immediately with an appropriate letter expressing your condolences on the loss of their child, and as a parent, understanding how difficult that is.

They had requested someone to look into the circumstances regarding the daughter's death.

And then in March, Mr. Parra sends the letter that, basically, is a bureaucratic brush off. It's cold, saying: we've looked, too bad.

So, then the family wrote to me yesterday, saying that Mr. Parra sent them a letter indicating there was insufficient evidence to take enforcement action.

"The Department and particularly Mr. Parra never once contacted us, Melody's parents, to discuss any of the facts which we had compiled, detailing our experience with the health plan leading up to our daughter's death. The investigation by the DOC was a travesty of justice for consumers."

And it goes on. We don't know all the facts

here, but I mention it as an example of dissatisfaction with the philosophy or follow-through. I'll give you these papers.

Other questions from Members? Senator Lewis.

SENATOR LEWIS: I'd like to move confirmation.

CHAIRMAN LOCKYER: Senator Lewis has moved confirmation. Let's call the roll, please.

SECRETARY WEBB: Senator Ayala.

SENATOR AYALA: Aye.

SECRETARY WEBB: Ayala Aye. Senator Brulte.

SENATOR BRULTE: Aye.

SECRETARY WEBB: Brulte Aye. Senator Hughes.

SENATOR HUGHES: Aye.

SECRETARY WEBB: Hughes Aye. Senator Lewis.

SENATOR LEWIS: Aye.

SECRETARY WEBB: Lewis Aye. Senator Lockyer.

CHAIRMAN LOCKYER: Aye.

SECRETARY WEBB: Lockyer Aye. Five to zero.

CHAIRMAN LOCKYER: See, the outcome looks easy, five to zero. Congratulations.

MR. BISHOP: Thank you very much.

CHAIRMAN LOCKYER: We obviously hope to work with you in collaborative ways in the future.

MR. BISHOP: And I look forward to doing so

[Thereupon. This portion of the Senate Rules Committee hearing was terminated at approximately 10:46 A.M.]

--ooOoo--

CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

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2:30 P.M.

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Evelyn J. Mizak
Shorthand Reporter

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SENATOR RUBEN AYALA

SENATOR JAMES BRULTE

SENATOR TERESA HUGHES

STAFF PRESENT

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NANCY MICHEL, Consultant on Governor's Appointments

WADE TEASDALE, Consultant to Vice Chair

ALSO PRESENT

JOSEPH B. FENLEY, Member
California Horse Racing Board

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SENATOR LEWIS: Beginning today we have Mr. Joseph Fenley of the California Horse Racing Board. Please come on up.

Do you have an opening statement?

MR. FENLEY: Yes, I do.

Good afternoon, Mr. Chairman, Members of the Committee. My name is Joseph Fenley, and I seek your support for my confirmation to the California Horse Racing Board.

I was appointed to the Board in November, and since then I have thoroughly enjoyed being part of the process of improving and updating the regulation of the horse racing industry. I look forward to being a part of the same process for next three years.

I recognize that the horse racing industry is one of California's most valuable assets, that it generates considerable revenue for the state, that it provides thousands of jobs to California citizens, that it has a tremendous impact on the state's economy.

Recognizing all this, I want to play a role in regulating this industry and ensuring that those jobs and that revenue are maximized and protected.

I bring many strengths to the Board, including the confidence and independence gained from building my own successful businesses from the ground up. And now that I have divested myself from those businesses, I am free to contribute my personal time to this effort.

Thank you.

SENATOR LEWIS: Any Member of Committee have any questions for Mr. Fenley at this time? Senator Hughes.

SENATOR HUGHES: Do you favor the placement of card rooms at race tracks and their operation by a publicly traded corporation?

MR. FENLEY: I've seen that the relationship between the card rooms and the handle at race tracks, I've seen the handle improve. So, if we were looking at improving just the handle, yes, I do favor that.

SENATOR HUGHES: What do you think about publicly traded corporations owning card rooms in other locations?

MR. FENLEY: Publicly traded corporations, in other words, they would be sort of entrepreneurial.

SENATOR HUGHES: Right.

MR. FENLEY: I think under the rules and regulations of the California Horse Racing Board, if they follow those guidelines, I don't have a problem with that.

SENATOR HUGHES: Do you think there's been any increase in criminal activities with expanded gambling?

MR. FENLEY: To the best of my knowledge there has not been.

SENATOR HUGHES: What do you like most about your job?

MR. FENLEY: I think it's thrilling. I've been around horses all my life. I'm a small thoroughbred owner. I see the future as something exciting. I see a development of a breeding program in California for Cal-breds. I see the

potential of the phone betting coming to increase the state handle.

I see we're having smaller races or fewer races with more horses in them. The bettors love that. They don't like a lot of races with fewer horses.

I think just improving the quality and integrity of the sport, and being on top of it and making sure that it's secure and safe for all the people of California.

SENATOR LEWIS: In recent years, in terms of attendance, horse racing has been somewhat in decline. It seems like maybe it's lost favor with some of the public over the years.

What do you think can be done to reverse that trend?

MR. FENLEY: I think a good marketing effort by the associations, some incentives.

There was a day that the Santa Anita had free parking, and ten thousand more people came, things like that. But I think there's a lot of competition with Indian gaming, and the lotteries, and things like that, and so the decline of the dollar -- the pie is splitting up a little bit more. And I think the associations, together with the horsemen, have to be more creative and innovative in bringing those people back.

I think another way of doing that is coming up new type of bets, parimutuel bets that are exciting for people.

SENATOR LEWIS: How much of that is based on demographic changes, with maybe people that enjoy the sport of kings are getting older, and maybe the younger generation hasn't

really taken to horse racing?

MR. FENLEY: Well, I couldn't answer that, but I think that the trend -- I don't think the attendance has gone down. I think the handle's been split up somewhat by the other forms of gaming available.

But demographically, I think if the economy is growing, and the population is growing, I think that same available thousand people would probably diversify to the other forms that are available.

SENATOR LEWIS: How much of your time is taken up with enforcement actions?

MR. FENLEY: Personally with the Board? We meet in executive session after the agenda of the board meeting and deal with specific issues that are on appeal from jockeys, other issues dealing with the Board.

SENATOR LEWIS: How big a problem these days is the use of illegal drugs?

MR. FENLEY: There is a continuing problem on the back side of the tracks with the grooms and people -- apprentice jockeys, people like that.

We see in the stewards report that are issued weekly, we see two or three incidents each week of apprehension. Those are dealt with with the stewards and the local police.

I don't think that problem's been checked. I think it's a growing problem.

SENATOR LEWIS: Any other questions?

SENATOR BRULTE: Does the name Ken Maddy mean

anything?

MR. FENLEY: Yes, the name means a lot.

SENATOR AYALA: Mr. Fenley, the satellite wagering that we have experienced or are experiencing today, how has that affected the attendance at the race track itself?

MR. FENLEY: I didn't understand your question, Senator.

SENATOR AYALA: The satellite wagering that we are experiencing today. We have one in San Bernardino.

Does that affect the attendance at the tracks themselves?

MR. FENLEY: Well, it certainly affects --

SENATOR AYALA: How is it working out? I guess that's what I want to know.

MR. FENLEY: Well, the attendance is certainly affected, but the betting is done, and the percent going to the state is equal or better, because you have a larger geographical area. You can pull in the 29 locations of satellite wagering in California today.

Having less of those, you wouldn't have the people going to the venue, but that's available to them, and so handle definitely is up. It's just that the association specifically doesn't benefit by the concessions, and parking, and things like that.

SENATOR AYALA: I've spoken to many people who attend a betting at the Orange Show that come from Beaumont, and Riverside, and Victorville. They really enjoy that, because they don't have to travel all the way into Pasadena or Arcada,

where ever, and from there they can return back to their home. So, it's convenient for them.

This doesn't affect the track attendance at all in terms of having more persons at the track itself?

MR. FENLEY: It does, but we're looking for the handle to increase. That's a business somebody is running.

If the State of California is looking for the handle because of the percentages they're getting from the handle, I think today there's only 29 satellite betting parlors in the State of California for 30 million people.

I think one area to expand is to expand that into many other cities to capture those people that don't come to the races because it's too far, and you could still take advantage of the betting.

SENATOR AYALA: Do you support expanding that type of operation?

MR. FENLEY: Absolutely.

SENATOR AYALA: All things fall into place, and it isn't a problem, I guess is what I'm trying to establish, as it pertains to having people come into the race track itself?

MR. FENLEY: It's not a problem. I think it could be expanded on a selected basis.

SENATOR AYALA: Do you favor placement of card rooms at the race track operated by a publicly traded corporation? We don't have that yet, do we, in California?

MR. FENLEY: I think Hollywood Park has an operation.

SENATOR AYALA: They have a card room?

MR. FENLEY: Yes.

SENATOR AYALA: No problem with that?

MR. FENLEY: I see no problem with that at all.

SENATOR AYALA: You don't have any problem if it expands to other race tracks?

MR. FENLEY: It has to be done on a very selected basis through the operator.

SENATOR AYALA: What about the drug testing policy that you have? I understand the Attorney General was concerned at one time about the drug testing policies at the race track.

Is that causing us any problems at all?

MR. FENLEY: Are we talking about the individuals or the thoroughbreds?

SENATOR AYALA: Horses, period.

MR. FENLEY: I've been on the Board a short period of time, and I don't know detail on that, but I do know there's a lot of surveillance and a lot of awareness with the staff and the stewards on that problem.

SENATOR AYALA: You see no problem with the drug testing of the horses at all?

MR. FENLEY: I think there's a program in California that is a remarkable program that is a standard for other race associations. And I don't know the depth, but I just know the headlines on that.

SENATOR AYALA: On that issue, closer to home, I represent, with Senator Brulte, the County of San Bernardino. They're trying to expand the track at Fairplex at the county

fairgrounds in Pomona from three-eighths of a mile to one mile.

MR. FENLEY: Yes.

SENATOR AYALA: Have you or the Board taken a position on that?

MR. FENLEY: No, but I think we will soon. I think it's on the agenda for the meeting in June.

SENATOR AYALA: It's scheduled for one of your future meetings?

MR. FENLEY: It's June 13th.

SENATOR AYALA: At this moment, you have no position on it?

MR. FENLEY: I'm in favor of it.

SENATOR AYALA: You just got my vote.

SENATOR BRULTE: Very good answer.

MR. FENLEY: There's a very good reason for that, Senator. Down the road, the present private association, such as Santa Anita, we don't know if property is going to become so valuable that they're going to sell that off, and we may wind up with just state-owned facilities, such as Del Mar and Fairplex, et cetera.

SENATOR AYALA: The fair's been there for almost 80 years, I guess. It's always drawing. The area's booming with new citizens, and they want to attend the race track.

MR. FENLEY: Right.

SENATOR AYALA: And the financing for that additional portion of the track would come from bonds underwritten by the General Fund, which I don't think would be any problem or any risk on the General Fund because it's never

been a loser. It's always been a winner. It's going to continue to grow, and it's going to continue to attract more people.

I agree with you, it's a darn good policy, and a good project, and I have a bill to do that.

SENATOR FENLEY: And I think it's a good investment for the future.

SENATOR AYALA: Thank you. I have no more questions, Mr. Chairman.

SENATOR LEWIS: Thank you, Senator.

Mr. Fenley, we're not aware, the Committee's not aware of any opposition to your appointment.

Let me just quickly ask in the audience, is there anyone here that wants to testify on behalf of Mr. Fenley? Is there anyone wishing to testify in opposition or express concerns?

Seeing none, what's the pleasure of the Committee?

SENATOR BRULTE: Move it.

SENATOR LEWIS: We have a motion.

Secretary, please call the roll.

SECRETARY WEBB: Senator Ayala.

SENATOR AYALA: Aye.

SECRETARY WEBB: Ayala Aye. Senator Brulte.

SENATOR BRULTE: Aye.

SECRETARY WEBB: Brulte Aye. Senator Hughes.

SENATOR HUGHES: Aye.

SECRETARY WEBB: Hughes Aye. Senator Lewis.

SENATOR LEWIS: Aye.

SECRETARY WEBB: Lewis Aye. Senator Lockyer. Keep the roll open?

SENATOR LEWIS: Yes, we'll place that matter on call.

Congratulations.

MR. FENLEY: Thank you.

[Thereafter, under Rule 28.7, CHAIRMAN LOCKYER's Aye vote was added, making the final vote 5-0 for confirmation.]

SENATOR LEWIS: Next today is Mr. Fred Hummel, State Architect.

Mr. Hummel, welcome to the Committee. Do you have any opening comment you'd like to make?

MR. HUMMEL: Thank you, yes.

My first job out of college, 1951, I went to work as a junior designer in the State Architect's office here in Sacramento. After working there for awhile, I went back to private industry and I formed my own business and practiced private architecture until 1968, at which time I was appointed as the State Architect of California and returned to the old office where I had worked before.

I worked there until -- as State Architect until about 1974, when the term ended, and returned to private practice, staying there until recently, when I returned again as State Architect of California.

I enjoy it. I'm very proud of it. We have some

very fine people working for us, and it's really a great pleasure to be part of a really good team.

I live in Sacramento. I enjoy it here. I'm pleased to be here today.

SENATOR HUGHES: Do any Committee Members have any questions of Mr. Hummel?

SENATOR AYALA: I have a question.

You and I discussed that issue in my office, what is the function of the State Architect?

MR. HUMMEL: Well, the State Architect has three basic sections of the office. One is the Office of Design Services. That office designs buildings for the State of California, in-house, and also does some contracting out when the workload is such that they can't do the work in-house.

The second section of the office is the Office of Construction Services. That office supervises and inspects construction that is funded by the State of California, and also includes in that other contract services, such as inspecting jobs for California State University system, some of the Caltrans projects, some of the Corrections projects, and also provides direct construction services in emergencies when something needs to be constructed very quickly by the state and you don't have time to go out and bid it, or it's too small to do so, such as partitions and such in state buildings that are quick things to do.

The thirds portion of the office is the Office of Regulation Services. That's the section of the office that does the checking of schools according to the Field Act, the Riley

Act, and the Garrison Act.

And this year, we'll probably produce about $1.9 billion worth of planned check schools because of the large increase in load.

SENATOR AYALA: As we discussed again in my office, there is no duplication of services between a local school district who hires their own architect who is certified to draw those plans for the school. But then we have to bring them to Sacramento to check someone else's work who are certified for that work as well as your architects here.

Why do we need that? Why do we have duplication?

MR. HUMMEL: Actually, as far as checking them, we have four offices, as you know, in California: San Diego, Los Angeles, Sacramento, and San Francisco.

And the only things we check for are structural safety under the Field Act. We don't check for quality or architectural features of the building, only check for the structural and then the ADA access rules, and fire and life safety. Those are the only things that our office checks for.

Now, any building that is a building in California is going to be checked someplace. If it's a local building, it's checked by local city or county building officials.

We do the schools here in the state because that's the way the law says we should do it. We really -- I don't think we'd say we duplicate anything, but we do carry a very high standard of consistency in checking of schools.

Keep in mind that it's not just for the safety of

school children, but during a time of disasters, schools are the areas or the buildings always used for disaster housing and such because they're built to a pretty high standard, a little higher standard than the normal uniform building code usually calls for.

And the cost for checking schools by the state, because of its consistency, and that's the only thing they do, is no more costly than if they were checked by local authorities. But they do have that feeling of consistency, and it's the only thing the office does.

SENATOR AYALA: It's an oversight on local architects, the work they do. I'm sure that everybody's concerned about the Field Act and implementation of the law, as you mentioned. The law requires that inspection from the State Architect.

To me, it's a delay that could be streamlined somehow, because I recall as a member of the board of education that it took months for the state to even recognize that they had a set of plans to check. And it already had gone through local architect that they hired, certified, only to be brought to Sacramento for a delay.

This is before your time, of course, here.

I just wondered why we have that duplication when the people down at the local level are just as qualified, or should be, or they better be, as those on your staff?

MR. HUMMEL: Your recollection is absolutely correct. It used to take a long time.

We now turn out eight schools a day. Our average

plan checking time is 34 hours for the average school.

The only time it's a delay right now is bin time. And that means the time from when the plans are filed until it's actually checked. The problem there is because of a tremendous workload increase of this year. The bin time has increased beyond what we care to have it. Therefore, we contract out with private engineers and architects to do the plan checking for that purpose.

The bin time, in some areas, is down to six weeks now. That's not good enough for us. We want it to be about three weeks, but we suddenly got hit with this huge surge of work. So, we've contracted with every contracting firm available today to also work with us to do that.

SENATOR AYALA: I'm not faulting you, because that's what the law requires. But I often wondered why we do that, since I'd like to think that the folks down at the local level are just as qualified as anyone you have here to check for the Field Act requirements.

MR. HUMMEL: I think you're absolutely correct.

SENATOR AYALA: So, why do we have that duplication? I don't understand it.

MR. HUMMEL: There isn't any duplication. We don't do it twice. We only do it one time.

SENATOR AYALA: They do it out there. They spend days and months doing that, checking plans and so forth.

MR. HUMMEL: They don't do the plan check. We do the plan check.

SENATOR AYALA: What do the architects do down

there?

MR. HUMMEL: Oh, you mean the architects producing it.

SENATOR AYALA: Sure.

MR. HUMMEL: Most of them are very qualified people, and they do a very good job.

SENATOR AYALA: I'm not going to argue the point, but seems to me that there should be no need for those plans to come up to Sacramento if the people down there are just as reliable, certified and trained professionally to do that work at the local level. It just seems to me a delay of time for the local school districts to proceed with their plans.

I know it's the law, so I'm not going to argue with you.

MR. HUMMEL: Even if it's a private building and not a school, the local architects still have their plans checked, and they're checked by the local building officials.

SENATOR AYALA: But not in schools, though.

MR. HUMMEL: No, the local building officials don't get involved in schools. But if it's a private project they do.

SENATOR AYALA: Most of your work is involved with schools; is it not?

MR. HUMMEL: Yes, sir.

SENATOR AYALA: Thank you, sir.

SENATOR HUGHES: Senator Brulte.

SENATOR BRULTE: Let me just follow up on that a little bit.

Is there a compelling reason why local building officials couldn't check plans for schools built in their community, as they check plans for everything else built in their community?

MR. HUMMEL: It varies a great deal, Senator. Some building departments do have capable structural engineers to do plan checking and some don't.

We have talked to numerous local building entities and asked them if they wouldn't like to have the right to check these plans delegated to them. In each case they have said, we would prefer not to, because it's the one single thing you do; you do it consistently, and we would prefer not to take over that section of the work.

However, we have recently done some certifying locally because we've had such a huge influx in the classroom reduction size that we have certificated local people to do the plan checking for our life, safety and ADA.

SENATOR BRULTE: What are the areas you check plans for for schools?

MR. HUMMEL: We check for structural integrity, fire and life safety, and ADA compliance for the handicapped.

SENATOR BRULTE: And it takes 34 hours a school.

MR. HUMMEL: An average of 34 hours. Average school today is about an $800,000 school. Some are larger; they take longer.

SENATOR BRULTE: How many schools were checked last week? How many plans for schools were checked last week?

MR. HUMMEL: Last week we had four offices turning out two schools a day. We will check 2,000 schools. Well, we checked 2,000 schools last year. This year, we'll probably check closer 3,000 schools.

SENATOR BRULTE: Out of those 2,000 schools, how many plans were rejected because they didn't meet the standards?

MR. HUMMEL: Well, it wasn't so much rejecting them, but they were sent back to have corrections made.

SENATOR BRULTE: How many?

MR. HUMMEL: I would say 80 percent of them went back for corrections, most of them fairly minor, some of them major.

SENATOR BRULTE: Do you sanction architects that do them wrong?

MR. HUMMEL: I'm not sure I understand the question.

SENATOR BRULTE: Let me see if I have this right. There are certain standards that schools have to meet. Schools go out and hire architects to draw up plans to meet those standards.

MR. HUMMEL: Right.

SENATOR BRULTE: You're telling me 80 percent of the architects that do this get it wrong.

MR. HUMMEL: No, 80 percent of the architects might have some minor corrections. And some of those corrections are because of new regulations in fire and life safety, ADA access. It's not so much of them doing it wrong; it's to clarify mainly the ADA issues, which are a civil rights

issue, and it isn't really a prescriptive code.

We help them through it so that both the school boards, their administrators and the architects have made the best possible effort they can.

SENATOR BRULTE: Now, the major problems, you said some have major problems?

MR. HUMMEL: Some do have major problems.

SENATOR BRULTE: Could you give this Committee an example?

MR. HUMMEL: Yes. Often a school district will hire an architectural and engineering firm that has never done a school before, and they're not familiar with the Field Act.

They will often come in with building designs that might meet the uniform building code, but not the more stringent requirements of the Field Act. And to correct that, we're now having what we call concurrent plan review, that I just put into use about six months ago.

Whenever an architect or an engineer has a school where they've never done one, they can come into the office and bring their preliminary plans in, and we'll check them with them during preliminaries. We'll check them part way through construction documents so that when they complete the plans, they're much more likely to have them perfect the first time.

SENATOR AYALA: To add on to what Senator Brulte said, the time it takes for you to check the plans for the school is 34 hours?

MR. HUMMEL: Approximately, for the average school, yes, sir.

SENATOR AYALA: From the time you get started?

MR. HUMMEL: Yes.

SENATOR AYALA: Then it may be weeks before they get to them, according to the traffic you might be experiencing at the time.

MR. HUMMEL: Yes, sir.

SENATOR AYALA: So, it'd be more than just 34 hours. Is 34 hours the actual time?

MR. HUMMEL: That's the actual work time on the board once we gets started.

SENATOR AYALA: I mentioned this many years ago, why couldn't the state come up with four or five plans for schools according to the environment and climate where that school's going to be located, whether it be the beach, the mountains, the desert, the valley? And then a school district could select one of those plans to construct on there?

I believe in local government, home rule, so I just wondered if the school district wouldn't like that, but it would save a lot of money; wouldn't it?

MR. HUMMEL: It could be done, and it would save a lot of money, yes, sir.

SENATOR AYALA: They say, here's five plans. You folks are located on the beach. These are the schools that we recommend for your area?

MR. HUMMEL: Yes, sir.

SENATOR AYALA: Of course, the architects would probably argue with that.

MR. HUMMEL: The argument that always comes up on

that subject is that it just wouldn't fit our local property, or our conditions and such. That sort of emotional argument that can go on forever.

SENATOR AYALA: It would save a lot of tax dollars by doing it that way?

MR. HUMMEL: Not a great deal of tax dollars because, you see, your fee to design a school is only eight percent of the total cost of the school. And you'll pay the contractor 15 percent right off the top.

SENATOR AYALA: How much, 8 percent?

MR. HUMMEL: Eight percent is the maximum they can pay.

SENATOR AYALA: It used to be five, of course, inflation, everything goes up.

I understand that. My point is that if the plans were already drawn according to environment and conditions that exist in that location, there'd be an awful lot of savings because you're still talking about the cost of drawing those plans.

MR. HUMMEL: You'd still save about three percent, because the rest of the cost still has to go into meeting the soil conditions that you have.

SENATOR AYALA: Three percent only?

MR. HUMMEL: You'd probably save about three or four percent at the most.

SENATOR AYALA: I think it's worth the home rule over the control aspects of it, I guess.

MR. HUMMEL: A lot of people would agree with

that.

SENATOR AYALA: I won't introduce legislation to do that.

SENATOR BRULTE: Three percent on a $3 billion bond is a pretty good chunk of change.

Let me just ask you another question. Eight percent of the construction can go to architect's fees?

MR. HUMMEL: Yes, sir. That's everything. That's not just the architects. It's all the engineers --

SENATOR BRULTE: Doesn't that create an economic incentive to have a higher cost of construction?

MR. HUMMEL: Only an intelligent school board or any client will use that only as a basis, and reach a definite guaranteed maximum price before you start.

I've done many schools in my own practice, and I've never had one that had open ended contract.

SENATOR BRULTE: Senator, I'd like to move this nomination, but I'd also like to support your bill, Senator Ayala.

SENATOR HUGHES: I'd like to ask some other questions of the Architect.

At the beginning, you mentioned the fact that the Office of Regulation checks for Field Act compliance, Riley Act and Garrison Act. Tell me, what is the Riley Act and the Garrison Act.

MR. HUMMEL: The Riley Act and the Garrison Act were modifications later on, after the Field Act was first passed. And some of them apply to only specific schools, some

apply -- part of the Garrison Act applies only to the remodeling of existing school buildings. Basically, it's all same thing, but they rolled it together and apply, depending on the type of building it is.

SENATOR HUGHES: Once a building is erected and it's declared in Field Act compliance, how frequently then is that building checked or rechecked to see if it still meets the Field Act standards.

MR. HUMMEL: The State Architect's office doesn't recheck it unless a modification is done to the building.

Now, up until right now, a modification of $25,000 in construction value can be done by a school district. You can do -- a school district can do $25,000 without bringing it to the state.

If you go over that, then you bring it in to be sure that those structural items are reducing the safety, or the fire life safety has been reduced as far as the children are concerned.

Now, there's presently a bill in to raise that limit to $100,000.

SENATOR HUGHES: After an earthquake, do you systematically go around and inspect buildings of certain age?

MR. HUMMEL: Yes, ma'am.

SENATOR HUGHES: What is the age cut off?

MR. HUMMEL: No particular age cut off, but it's types of buildings, the location and the severity of the earthquake. We know the buildings that we would check first, and if there are any complaints about cracking, or anything in a

building, we'll check that immediately.

We were very pleased that none of our buildings has ever had a problem, but we do check them after earthquake very quickly, plus the fact that's the local community's safe spot to go, and you want to be that they are safe.

SENATOR HUGHES: What about bungalows that are declared Field Act safe? Are they checked periodically, or once a bungalow is Field Act safe, do you then assume that they're always Field Act safe unless you have had major earthquake?

MR. HUMMEL: We would assume them to be safe unless we had something that would damage them, fire, earthquake. Or, we could also have a request from the school district to say, would you please check this to see that it still meets the ADA requirements?

SENATOR HUGHES: What about age-wise, because I know of a school district where they have some really sort of ancient bungalows that were supposedly Field Act safe, and what would a district have to do? Make a special request to have these buildings checked? And if they did, would the charge be made to the school district for paying for this inspection?

MR. HUMMEL: Yes, but it would be very minor, and we would check it at any request.

SENATOR HUGHES: How long does it take to have these buildings checked? I mean, it takes all of these months and weeks to have plans checked, but how long would it take a school district to have a building checked if there was not an earthquake recently?

If, for instance, you just had an old district

with some old bungalows, and the school board wanted to have them checked, how long from request to implementation of the inspection?

MR. HUMMEL: Well, I hope it would be within a week. There's be no reason why we couldn't. We just did one in Paso Robles -- excuse me, in San Luis Obispo two months ago. We got the request on a Monday, and it was finished before Friday.

SENATOR HUGHES: From whom does the request have to come? From the school board or from the superintendent?

MR. HUMMEL: Either.

SENATOR HUGHES: Alright, thank you very much. You've helped me a great deal.

Is there anyone in the audience that would like to testify for Mr. Hummel?

Do I hear a motion?

SECRETARY WEBB: We already have a motion.

SENATOR HUGHES: We have a motion by Senator Brulte.

Secretary, call the roll.

SECRETARY WEBB: Senator Ayala.

SENATOR AYALA: Aye.

SECRETARY WEBB: Ayala Aye. Senator Brulte.

SENATOR BRULTE: Aye.

SECRETARY WEBB: Brulte Aye. Senator Hughes.

SENATOR HUGHES: Aye.

SECRETARY WEBB: Hughes Aye. Senator Lewis. Senator Lockyer.

Leave the roll open?

SENATOR HUGHES: Alright, we'll leave the roll open.

MR. HUMMEL: Thank you very much.

[Thereafter, under Rule 28.7, CHAIRMAN LOCKYER 's Aye vote was added, making the final vote 4-0 for confirmation.]

[Thereupon. This portion of the Senate Rules Committee hearing was terminated at approximately 3:03 P.M.]

--ooOoo--

CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 29th day of May, 1997.

EVELYN J. MIZAK
Shorthand Reporter

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Legislature

STATE CAPITOL
ROOM 113
SACRAMENTO, CALIFORNIA

MONDAY, JUNE 2, 1997
2:27 P.M.

SENATE RULES COMMITTEE

STATE OF CALIFORNIA

HEARING

STATE CAPITOL

ROOM 113

SACRAMENTO, CALIFORNIA

MONDAY, JUNE 2, 1997

2:27 P.M.

Reported by

Evelyn J. Mizak
Shorthand Reporter

APPEARANCES

MEMBERS PRESENT

SENATOR WILLIAM LOCKYER, Chair

SENATOR JOHN LEWIS, Vice Chair

SENATOR JAMES BRULTE

SENATOR TERESA HUGHES

MEMBERS ABSENT

SENATOR RUBEN AYALA

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NANCY MICHEL, Consultant on Governor's Appointments

WADE TEASDALE, Consultant to SENATOR LEWIS

FELICE TANENBAUM, Consultant to SENATOR HUGHES

SHANNON HOOD, Consultant to SENATOR BRULTE

ALSO PRESENT

MATHEW C. KRAMER, Warden
Sierra conservation Center, Jamestown
Department of Corrections

FRANK R. SEARCY, President
Chicano Correctional Workers Association

FORD D. CANUTT, Chapter President
Sierra Conservation Center, Jamestown
California Correctional Supervisors Organization

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--ooOoo--

CHAIRMAN LOCKYER: Gubernatorial appointees, because of the absence of Senator Ayala, I think we probably need to postpone Mr. Cluff. I know he always has numerous questions to ask, so I apologize for the inconvenience to anyone that's here prepared to testify on that item, but we'll just have to delay.

Mr. Kramer is the Warden. Are you here? Please come on up, sir.

MR. KRAMER: Thank you, Senator.

CHAIRMAN LOCKYER: Sierra Conservation Center.

MR. KRAMER: Yes, sir.

CHAIRMAN LOCKYER: We've got a little booklet.

What do you want us to know about you? Do you have some prepared comment?

MR. KRAMER: Yes, sir.

Mr. Chairman, Senators, my name is Mat Kramer. I'd like to present [sic] my opportunity to present my qualifications to the Senate Rules Committee today for the Warden's job at Sierra Conservation Center.

With 27 years of public service with the State of California, 18 years as a state manager, and five years as a state supervisor, probably the most pertinent experience I have to this particular assignment was my last ten years, where I was up at the California Correctional Center and served as the acting warden for a year.

Prior to that assignment, when I first went up to

Susanville, I was the Business Manager in charge of the $80 million budget and about 1100 employees at the institution. After that, I took on a post as the Associate Warden for Program Operations, where I supervised and managed an 1100-bed medium custody, Level III facility, which included an administrative segregation facility. I also had responsibility at that time for managing the education program and served as chief disciplinary officer.

In 1993, I was promoted to the position of Chief Deputy Warden at the California Correctional Center, and I was also involved in the preactivation of High Desert State Prison.

Since at Sierra, I believe we've made a number of improvements in Sierra's operation. We've implemented a work incentive program at Sierra which increased the education program. We increased by 20 percent the hours that the inmates get in the education program. It went from approximately 45,000 hours a month to 57,000 hours a month with no increase in budget and no increase in staff.

We've also implemented some increased security measures. We have stricter custody designations and inmate accountability. We've also been able to maintain at the same time the conservation camps. We manage the 20 conservation camps from Sacramento to the San Diego area.

Last year, we had a record number of hours out fighting fires. We had 1,800,000 inmate hours last year on fires, and another 137,000 hours on flood control, flood work.

We also expanded our Adopt a School Program and Computers for School Program, where at Sierra we've refurbished

2200 computers for state schools.

I think these changes have been made successfully, enhance the programs at Sierra, but keeping in mind security and the protection of the employees and staff.

With that, Senator, I'd be happy to answer any questions. Thank you for opportunity to present this to the Committee.

CHAIRMAN LOCKYER: Thank you very much.

You've been at the current site for how many months now?

MR. KRAMER: Nearly a year.

CHAIRMAN LOCKYER: Almost a year.

At the previous assignment, the Conservation Center, what issues arose there on your watch that were notable that come to mind that explain something about the judgments you make on issues that walk in the door?

MR. KRAMER: I think as far as the overall operation at the prison, we certainly enhanced the -- we added a Level III facility. I was up there when we added a Level III facility. The reviews, I think teams that come in and do the audit reviews and what-not all gave the institution good reviews for the way the institution was being run and improvements that took place during the years that I was up there.

CHAIRMAN LOCKYER: Was the Level III expansion maybe the most difficult task that you undertook during that assignment, or is there something else that comes to mind?

MR. KRAMER: That was probably the most difficult as far as expanding and successfully implementing the program.

CHAIRMAN LOCKYER: How are inmates selected for the program? Is there some system that helps you do that?

MR. KRAMER: Right. We have inmates come in from the Reception Center, and they come in with an initial classification, and we do a classification at the institution.

CHAIRMAN LOCKYER: So, you do your own?

MR. KRAMER: And our primary mission at both Susanville and at Sierra is the camp program. So, we're screening the inmates to make sure they meet the criteria with their criminal background that we can successfully put them out into a conservation camp. And we have to have about twice as many inmates come into the system that we screen out, because not only their background, but they also have to be medically fit, medically qualified in order to go out into the camp program.

CHAIRMAN LOCKYER: So, about half get selected?

MR. KRAMER: About half, right, of the pool that comes in, about 50 percent actually go out to the camp program. And since these camp inmates are providing about half the state's wildlands fire fighting resource, I think it's really important that we keep these camps full. We've been able to successfully do that.

CHAIRMAN LOCKYER: Is it principally fire fighting, or does it vary with the time of the year?

MR. KRAMER: It varies with the time of year. We had 137 hours [sic] of flood -- flood work last winter. And in fact, when I was up at Susanville, we proposed the legislation that expanded the camp program, which passed two years ago,

which expanded the camp program to include both floods and any other natural disasters. Prior to that, we were limited to just fighting fires.

CHAIRMAN LOCKYER: How many hours do you think in fire fighting?

MR. KRAMER: About 1,800,000 hours in fire fighting. It was a record.

CHAIRMAN LOCKYER: A million eight hundred?

MR. KRAMER: A million eight hundred thousand hours.

CHAIRMAN LOCKYER: Is that statewide?

MR. KRAMER: That's for Sierra, just for Sierra Conservation.

CHAIRMAN LOCKYER: What do you think that is statewide?

MR. KRAMER: Probably close to double that with Susanville.

CHAIRMAN LOCKYER: You pick up maybe half of the fire fighting?

MR. KRAMER: A little more than half. We have the L.A. We kind of do year around fire fighting down around the San Diego-L.A. area.

We were up two weeks ago. We had 130 inmates out two weeks ago in fires down around the L.A. area.

CHAIRMAN LOCKYER: Do you ever have significant security problems on the external crews?

MR. KRAMER: We've been fairly lucky. We've only had about 24 walk aways from the camps on the fire crews over

the last year, which is about one percent. We have 2200 inmates that are out in the fire camps, and we have about a one percent walk away rate.

CHAIRMAN LOCKYER: Do you get them all back?

MR. KRAMER: We got about half of them back. Eventually, we get a little more than that. But at the time we put in pretty intensive escape-pursuit plans into effect in that area, and if they haven't got a ride out of there right away, about half the time we're successful in getting them back.

CHAIRMAN LOCKYER: Where do you find them when you pick them up later?

MR. KRAMER: Excuse me?

CHAIRMAN LOCKYER: The ones that get a ride, where do they get a ride to?

[Laughter.]

MR. KRAMER: Usually out of the area.

CHAIRMAN LOCKYER: Is it L.A? Where do they try to go?

MR. KRAMER: Sometimes out of state. It can be where ever -- a lot of times, we'll notify -- we'll notify the local authorities where they're from. We'll notify any family. We'll also notify the victim, any victims that are on record whenever we have a walk away to make sure they're aware. We'll notify the local police departments from the area they were from.

CHAIRMAN LOCKYER: So, you look for the contacts, basically?

MR. KRAMER: The contacts, yes, Senator.

CHAIRMAN LOCKYER: Do you have any overcrowding problems?

MR. KRAMER: Yes, we do. We're at about 160 percent overcrowding at Sierra now.

CHAIRMAN LOCKYER: Is this based on a one per cell calculation?

MR. KRAMER: It's on the one per cell on our Level III, and our dorms are double. The dorms were originally designed for 16 inmates, and we're from 30 to 34 inmates.

CHAIRMAN LOCKYER: How do you accommodate that?

MR. KRAMER: We have additional staffing.

CHAIRMAN LOCKYER: I mean, is it a bunk bed?

MR. KRAMER: Bunk beds, double bunk.

CHAIRMAN LOCKYER: That's how you add? That's how you double up?

MR. KRAMER: Right, we double bunk. They went from single to double bunk.

CHAIRMAN LOCKYER: Senators?

SENATOR HUGHES: Since your inmates get some experience in fire fighting, do any of them, after they're free, apply for professional jobs as fire fighters? Or are they encouraged to do so?

MR. KRAMER: Yes, some of them. Some of them have gone on with the federal government, the hot shot crews or State CDF as summer fire fighters.

They are also trained. They have the same level of training, what they call a Level One training, that they do qualify at the same rate as would the hot shots or outside free

fire fighters.

SENATOR HUGHES: I was looking at your capacity that your facility was built for, and you're almost double in terms of the population that you have there compared to what your capacity is.

What kinds of policy changes have you implemented or do you plan on implementing to alleviate this overcrowding?

MR. KRAMER: Well, we're kind of dictated to us by the inmates that are coming into the system. As long as we have the number of inmates coming into the system, then we have to place them in beds.

At Sierra, we're having -- we have a full capacity at Sierra with the beds we have now. What we're looking for in the future at Sierra is, we have identified or are identifying 250 additional camp beds. So, we'll be taking the current camp program, looking to see where we have infrastructure that can handle additional inmates, and going out and doing double bunking in some of the camps to handle that additional 250.

SENATOR HUGHES: You have up and down bunk beds? Upper and lower?

MR. KRAMER: Upper and lower bunk beds, yes.

SENATOR HUGHES: How do you make the decision on who goes above and who goes below, or is it up to the inmate themselves?

MR. KRAMER: It's made by the unit. The unit staff and the time that the inmates are in the unit or in that facility, and then they work out as to which bunk they're

assigned to.

SENATOR HUGHES: What are your views on alternatives to incarceration, and which ones do you think are the most successful?

MR. KRAMER: I think the drug rehabilitation programs are probably the ones that we've seen as far as lowering the recidivism rates.

Also, I think the camp program as far as taking inmates in. I know it's still incarceration, but least when they're in the camp program, they're in the system. They're not in a position where they can commit additional crimes.

SENATOR HUGHES: I understand you have a vocational training and education program.

What is your waiting list for getting into the these programs?

MR. KRAMER: Our waiting list is approximately four to six months once an inmate comes in before they get into a vocational or education program at this point with the overcrowding. Months.

Once they come into the institution, they're usually without an assignment for approximately four to six months.

SENATOR HUGHES: She thought you said 46 months. She said, gee, that's four years. You said four to six. I heard you say four to six, thank you.

What about the fact that I was reading that about 65 percent, half the population of your inmates only read at or about the fourth grade reading level?

MR. KRAMER: That's -- Senator, that's approximately the level that most of our inmates come into the prison. When they're tested, they're at about the fourth to sixth grade level.

We try to get them -- place them in an education program if they fall below the eighth grade level. We try to place them, primary placement, into a basic education program to teach them to read and write; that's correct.

SENATOR HUGHES: So, if some of these inmates are then interested in becoming fire fighters, and interested in applying for civil service, then you would help them with reading geared to pass these basic kinds of exams and upgrade their reading levels?

MR. KRAMER: We give them a basic education level. We also have ESL for those non-speaking English to give them a basic level that they can function, and communicate and function at the prison as well as in a fire fighting capacity. That should at least help prepare them, once they get out, where they could apply for a fire fighting, wildlands fire fighting position.

SENATOR HUGHES: How many hours did the crews work during the recent winter floods? Do you have any idea?

MR. KRAMER: I believe that was the one hundred -- that was the -- 137,000 hours of inmate labor was put in last year during the floods.

SENATOR HUGHES: When you have these emergencies like fires and floods, are there any inmates who are uncooperative or show fear of going out on these ventures? If

so, how do you work with them?

MR. KRAMER: At the time that there's a problem with them where they become a disciplinary problem, we'll put them back into the institution and immediately replace them with another inmate that's gone through the training program to get them out to fight the immediate problem of either the fire or the flood.

We then take them back to a committee, and we talk to them, and we assess whether we can put them back into the program, retrain them, or whether they'll be reassigned to another assignment that -- if they just don't fit in or they're not working out in that program.

SENATOR HUGHES: If they do an outstanding job or something in terms of rescue and what have you, are they rewarded? How are they rewarded, and what has to be the level of their accomplishment in terms of receiving a reward?

MR. KRAMER: We had some inmates during the fire storm, the Malibu fire storm two years ago that actually went in and saved a number of folks. Saved -- rescued them from their house.

We put them up for a meritorious award. They go to a committee. We do a write-up on what they did. It goes to a committee, and then they can reduce or take time off their sentence, depending upon what acts they did.

SENATOR HUGHES: Are they told that up front, before they go out to fight the fire or fight the flood, that if they do extraordinarily well, they will be rewarded? Or do you just let the word get around?

MR. KRAMER: The word gets around. The word gets around, Senator. Most inmates are aware of it.

SENATOR HUGHES: So, that in itself becomes incentive for them to participate in whatever the activity is?

MR. KRAMER: That's correct, Senator.

SENATOR HUGHES: Thank you very much.

CHAIRMAN LOCKYER: Senator Lewis.

SENATOR LEWIS: In terms of the criteria of who might be able to participate in this camp program, where's the line drawn in terms of the seriousness of the crime they committed in the past?

MR. KRAMER: We have a very strict criteria that we've established that's been administratively established by the Department that you don't put inmates out there with serious crimes such as arson, murder, rape. Those types of serious crimes would disqualify an inmate from going out to a camp.

Most of the inmates we have out in camp are on drug -- DUI, drug, theft, property-type crimes.

SENATOR LEWIS: Would that automatically exclude all violent criminals?

MR. KRAMER: Serious violent criminals would be excluded, yes, Senator.

CHAIRMAN LOCKYER: Are there people present who would wish to comment? If they're supporters, just indicating that would be fine. The hearts and flowers I could write for you.

If there are negative comments, those are the kind of things -- not that we want we need to emphasize those,

but we need hear about it. And I think everyone that's present is a positive comment.

MR. SEARCY: Thank you, Senator, and good afternoon Committee Members. Frank Searcy, President of the Chicano Correctional Workers Association.

As Mr. Kramer has identified his experience, we find that that is very pleasing. We have found that his experience in Corrections is very well versed, has good variety of it.

Therefore, the Chicano Correctional Workers Association supports his confirmation for Warden at Sierra Conservation Center. Thank you.

CHAIRMAN LOCKYER: Thank you.

Anyone else? Do you want to come up? Please do.

MR. CANUTT: I'm Ford Canutt. I'm a lieutenant at Sierra Conservation Center, and I'm also the Chapter President of the California Correctional Supervisors Organization.

And we've worked with Mr. Kramer for the past almost year-and-a-half and found him to be a very capable, fair, and ethical Warden. And we wish to keep him there.

CHAIRMAN LOCKYER: They move them around as soon as they can buy a home.

MR. CANUTT: Well, that's all I have to say. Thank you.

CHAIRMAN LOCKYER: Thank you very much.

Okay, Senator Lewis, what's your pleasure?

SENATOR LEWIS: Move confirmation.

CHAIRMAN LOCKYER: We have a motion.

Any further questions or comment? Call the roll.

SECRETARY WEBB: Senator Ayala. Senator Brulte. Senator Hughes.

SENATOR HUGHES: Aye.

SECRETARY WEBB: Hughes Aye. Senator Lewis.

SENATOR LEWIS: Aye.

SECRETARY WEBB: Lewis Aye. Senator Lockyer.

CHAIRMAN LOCKYER: Aye.

SECRETARY WEBB: Lockyer Aye. Three to zero.

CHAIRMAN LOCKYER: Let's leave the roll open so Senator Brulte can record.

Thank you, Warden. Good luck to you.

MR. KRAMER: Thank you very much, Senator.

CHAIRMAN LOCKYER: We wish you every success.

[Thereafter, SENATOR BRULTE added his Aye vote, making the final vote 4-0 for confirmation.]

[Thereupon. This portion of the Senate Rules Committee hearing was terminated at approximately 2:47 P.M.]

--ooOoo--

CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 3rd day of June, 1997.

EVELYN J. MIZAK
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STATE OF CALIFORNIA

Legislature

STATE CAPITOL
ROOM 113
SACRAMENTO, CALIFORNIA

MONDAY, JUNE 9, 1997
2:20 P.M.

SENATE RULES COMMITTEE

STATE OF CALIFORNIA

HEARING

STATE CAPITOL

ROOM 113

SACRAMENTO, CALIFORNIA

MONDAY, JUNE 9, 1997

2:20 P.M.

Reported by

Evelyn J. Mizak
Shorthand Reporter

APPEARANCES

MEMBERS PRESENT

SENATOR WILLIAM LOCKYER, Chair

SENATOR JOHN LEWIS, Vice Chair

SENATOR RUBEN AYALA

SENATOR JAMES BRULTE

SENATOR TERESA HUGHES

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NANCY MICHEL, Consultant on Governor's Appointments

WADE TEASDALE, Consultant to SENATOR LEWIS

FELICE TANENBAUM, Consultant to SENATOR HUGHES

SHANNON HOOD, Consultant to SENATOR BRULTE

ALSO PRESENT

DAVID W. FLEMING, Commissioner
California Transportation Commission

SENATOR DAVID ROBERTI

CHARLES H. CENTER, Member
Industrial Welfare Commission

CODY G. CLUFF, Member
South Coast Air Quality Management District Board

MARK ABRAMOWITZ, President
Community Environmental Services

EDWIN C. LAIRD
Small Business Coalition of Southern California

EUGENE L. FISHER, Former Employee
South Coast Air Quality Management District

V. JOHN WHITE
Sierra Club
League of Conservation Voters
National Resource Defense Council
Coalition for Clean Air

PETE PRICE
California League of Conservation Voters

BARRY BROAD
California Teamsters Public Affairs Council
California Conference Board, Amalgamated Transit Union
Region 8 States Council
United Food and Commercial Workers

RALIMAN SHABAZZ
Los Angeles League of Conservation Voters
The Community Coalition for Change

ALLEN DAVENPORT
Service Employees International Union

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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN LOCKYER: This is the confirmation of David Fleming as a Member of the Transportation Commission.

SENATOR ROBERTI: Thank you very much, Senator, and thank you, Senators, for taking this up.

I'm here to, I guess in effect, introduce David Fleming, who, in many ways needs no introduction. I have known him for a number of years, especially since that period of time when I began representing the San Fernando Valley. He in many ways is the San Fernando Valley, among many other attributes that he has.

He's a prominent lawyer with the law firm in Los Angeles of Latham and Watkins. He has spearheaded the Los Angeles City Charter Reform. He is a leader in just about every aspect of San Fernando Valley business that you can think of, and he has the respect across the board of people of all political persuasions.

Whenever someone looks to a business leader to sort of take the lead in community affairs, not only in the Valley but in the City of Los Angeles as well, at the top of the A list is always David Fleming. He has enormous respect throughout the City. He has my enormous respect, and I was delighted when he asked me to come participate in his confirmation. I was very happy to do it.

So, with that, David, maybe you can say a few words on your qualifications to the California Transportation Commission.

CHAIRMAN LOCKYER: I have to note, anyone who's capable of getting Tom McClintock and Sheila Kuehl, as well as David Roberti to support them says something.

MR. FLEMING: Thank you, Mr. Chairman and Members of the Committee.

It's an honor for me to appear before you today having been nominated by the Governor for this important Commission. And I'm really doubly honored to have been introduced by my good friend and former leader of this august body, Senator Roberti.

The Senator and I go back a long way. We have worked on a lot of things together on behalf of the business community in the Valley. I served, I was honored to serve, on the Senator's advisory committee for several years.

I must admit, we didn't always agree on everything, because nobody usually does in political life, but we always sought common ground. We resolved almost every issue, always amicably, and always with great respect and regard for one another.

Over the past 30 years, I've served on several bodies at various levels of government. Two Los Angeles City commissions, one of which I currently chair, which is the Board of Fire Commissioners, and on four Los Angeles County commissions.

During this past year, the Mayor of Los Angeles and I wrote and co-chaired a recently approved voter ballot measure, as the Senator has referred to, which elected a Citizens Charter Reform Commission to help restructure Los

Angeles City's government and its out-dated and disjointed City Charter, which was adopted some 70 years ago when Los Angeles was but a fraction of its present size, diversity, and complexity. The work of that committee will eventually go to the voters in two years for their consideration and approval.

As an attorney in private practice, public and community service has always been important in my life. Over the years, I have volunteered, according to time records, 25,000 hours of my time to serve various civic, community, and charitable organizations of all kinds.

I consider transportation a vital key to California's future. Though I come from Los Angeles, with its unique and well publicized transit problems, I strongly feel that this state's transportation system must be viewed as an asset and a resource belonging to all the people of California, regardless of where they reside in our state, because what happens in one area of this state directly or indirectly affects everyone everywhere in this state. So, we must think globally, that is, statewide in our planning and funding decisions when it comes to both maintaining and growing California's transportation infrastructure.

To paraphrase John Donne, no part of the state is an island. Our transportation funding decisions tolls for everyone, for we're all in this together.

And if you should confirm my appointment, I look forward to working not only with the Members of the Transportation Commission, but with the Legislature, the Governor, with local jurisdictions and communities throughout

the state to plan for, to fund, and to help meet California's future transportation needs.

Thank you very much.

CHAIRMAN LOCKYER: Thank you.

Are there questions from Members at all?

SENATOR AYALA: I'd like to ask Mr. Fleming, how do you believe the seismic bridge retrofits should be funded?

MR. FLEMING: Well, fortunately, Senator, that's not within the purview of the CTC. It's between the Governor and the Legislature.

I'm delighted to hear that you're close to resolution of that matter.

I feel that the Bay Bridge is an important asset belonging to all of California. And I'm very hopeful that we can work out a balance to pay for this, and I think it's close to resolution.

You know, it seems to me that had we known the facts at the time that the seismic retrofit ballot measure was put on the ballot, and we had increased the amount in that measure by a billion dollars, which is what we're short, I don't think there's any question that the people of California would have approved it. So, consequently, it's something that we have to face. We can't let part of the state go unheeded. And I'm hopeful a resolution can be made of this as soon as possible.

SENATOR AYALA: But you don't have any definite idea as to how it should be funded?

MR. FLEMING: Other than what I've been reading and hearing, that there would be a portion from tolls and a

portion from the state fund, I have no other ideas or suggestions. I just -- I know it's important that we get this issue resolved.

SENATOR AYALA: Do you believe California can meet its transportation needs with existing funding sources?

MR. FLEMING: I think in the long run, we have to start thinking about ideas, exploring ideas, to perhaps change the funding that we have for the infrastructure. Right now, it's based upon the sale of gallons of gasoline.

We know that cars are more fuel efficient. We know now with the advent of the electric car that this is probably not going to work in the long term. In the short term, fine, but in the long term, I think we have to start thinking about addressing the issue as to how we're going to eventually pay for the transportation needs, raise the money for the transportation needs in this state. Because transportation and the future of the California are inextricably entwined.

SENATOR AYALA: You had an interesting idea earlier today when we met about not funding the highways necessarily from the sales tax, but according to miles that they drive on the streets and freeways.

MR. FLEMING: Our problem is that usage of the highway goes up, but the sale of gasoline gallonage either is constant or even begins to drop. So, consequently, we have to look more trying to tie in, I think, in the future.

And again, I just think this is something we've got to start studying and thinking about, is highway usage, street usage, and the paying for the system.

SENATOR AYALA: Thank you very much.

CHAIRMAN LOCKYER: Senator Hughes.

SENATOR HUGHES: Mr. Fleming, you know that in 1990, a trial court enjoined Caltrans for privately contracting out for engineering and inspection services.

Do you favor contracting out for these services?

MR. FLEMING: Let me say that I've read that opinion. The law is the law. And as long as that is the law, we should obey it.

And so consequently, that's something that we haven't discussed at CTC. It just came down. And I think there will be some discussion not only at the Transportation Commission, but clearly in the Legislature, by the people of California, as to what they want to do in the future.

SENATOR HUGHES: How do you personally feel about it? If we have qualified state employees who can perform these tasks, should we still allow Caltrans to take their authority and contract out for these services?

MR. FLEMING: Senator, my opinion is, whoever can do this and do a good job at the least cost to the taxpayers should be the way to go.

SENATOR HUGHES: Then would you support the Commission's recommendation for a Constitutional amendment authorizing Caltrans to contract out for other state services?

MR. FLEMING: I must say that until I find out more about that, I really don't have a position on it. I want to wait and I want to take a look at the facts first.

But again, I think however we can get it done for

the lowest cost and the best type of service is where we should go.

SENATOR HUGHES: Do you perceive of yourself having any conflict of interest serving in this capacity in terms of your own personal goals? Do you or your family, or you and as an individual, or your corporation, or partnership, currently own any properties which might increase or decrease in value based on a decision that you might make as a Member of this Commission?

MR. FLEMING: No, Senator. As a matter of fact, I have filed the necessary documentation with the state regarding conflict of interest, and I have none. Being a lawyer, I am very, very cognizant of being very careful to watch that so that there wouldn't be.

SENATOR HUGHES: Have you recently or in the past had any option to purchase any property that might fit this description?

MR. FLEMING: No, I have not.

SENATOR HUGHES: All right, thank you very much.

CHAIRMAN LOCKYER: Are there other questions?

Is there anyone else present who would wish to comment either for or against this confirmation?

I only had one question, sir, and I'd love to figure out how you do this as fellow member of the bar.

It looks like you're concurrently an attorney at Latham and Watkins and senior partner at Fleming and Ingalls. How does that work?

MR. FLEMING: No, Fleming and Ingalls was a firm

that I was with for many years. That firm disbanded in 1992 when I became of counsel with Latham.

CHAIRMAN LOCKYER: Your list of substantive community involvements is very impressive.

MR. FLEMING: Thank you, sir.

CHAIRMAN LOCKYER: I can see why Senator Roberti -- we haven't seen him for two years -- I can see why he wanted to break his rule of kind of leaving us alone, or whatever you want to call that, although we welcome him back any time, to make an appearance on your behalf.

You're obviously qualified for any job in California state government.

MR. FLEMING: Thank you sir.

SENATOR ROBERTI: Absolutely.

CHAIRMAN LOCKYER: We've all benefitted by your experience and assistance with these tasks.

What's the pleasure of the Committee?

SENATOR AYALA: I'll move the confirmation of Mr. Fleming.

CHAIRMAN LOCKYER: Motion by Senator Ayala to recommend confirmation. If you'll call the roll.

SECRETARY WEBB: Senator Ayala.

SENATOR AYALA: Aye.

SECRETARY WEBB: Ayala Aye. Senator Brulte. Senator Hughes.

SENATOR HUGHES: Aye.

SECRETARY WEBB: Hughes Aye. Senator Lewis.

SENATOR LEWIS: Aye.

SECRETARY WEBB: Lewis Aye. Senator Lockyer.

CHAIRMAN LOCKYER: Aye.

SECRETARY WEBB: Lockyer Aye.

[SENATOR BRULTE later added his Aye vote, making the final vote 5-0 for confirmation.]

CHAIRMAN LOCKYER: Thank you.

MR. FLEMING: Thank you very much.

SENATOR ROBERTI: Thank you, good to see you.

[There upon the Rules Committee acted upon legislative items.]

CHAIRMAN LOCKYER: It will probably be really quick for Mr. Center if we could jump around this way, Member of the famous, infamous, or something, Industrial Welfare Commission.

Do you want to start with any comment?

MR. CENTER: Thank you, Mr. Chairman. No comments. Just, it was an interesting three months serving on the Industrial Welfare Commission and going through the eight-hour day hearings. I just await your questions.

CHAIRMAN LOCKYER: We've received no opposition to the appointment. There are support letters mentioned.

How much time does it take? How many hours a month, or however you measure these things?

MR. CENTER: I came on in January. We had two meetings a week, sometimes no meetings.

CHAIRMAN LOCKYER: Two a week?

MR. CENTER: For a while, because we had three

different issues we were addressing. And the amount of time was really the paperwork. We had volumes of paperwork from people pro and against changing the eight-hour day, and reviewing all the paperwork was a lot of time.

CHAIRMAN LOCKYER: Are there questions from Members at all? Senator.

SENATOR HUGHES: On April the 11th of this year, You voted against the proposal to eliminate the daily overtime.

Why did you do that?

MR. CENTER: The main reason I voted against it, the proposed changes allowed the employees no choice, where the current system in the regulations, the employee has a choice with a vote. But it went so far from involvement with the employees to no choice at all. I could not support it.

SENATOR HUGHES: Do you think that this decision impacted males or females the most?

MR. CENTER: I'd say the choice on -- or the impact of demand over-time would probably impact single parents, whether they were male or female, the most who had to be involved in childcare.

SENATOR HUGHES: Right answer. You gave the right answer.

MR. CENTER: Thank you, Senator.

SENATOR HUGHES: Thank you.

CHAIRMAN LOCKYER: Other questions?

SENATOR HUGHES: Move it.

CHAIRMAN LOCKYER: We have a motion. Call the roll on that, please.

SECRETARY WEBB: Senator Ayala.

SENATOR AYALA: Aye.

SECRETARY WEBB: Ayala Aye. Senator Brulte. Senator Hughes.

SENATOR HUGHES: Aye.

SECRETARY WEBB: Hughes Aye. Senator Lewis.

SENATOR LEWIS: Aye.

SECRETARY WEBB: Lewis Aye. Senator Lockyer.

CHAIRMAN LOCKYER: Aye.

SECRETARY WEBB: Lockyer Aye.

[SENATOR BRULTE later added an Aye vote, making the final vote 5-0 for confirmation.]

MR. CENTER: Thank you, Mr. Chairman. Thank you, Members.

CHAIRMAN LOCKYER: Good luck.

Okay, Mr. Cluff is next.

Good afternoon, sir. Do you want to start with an opening comment? That's traditional or up to you.

MR. CLUFF: Okay. I have an opening comment. I'll try and keep it brief.

CHAIRMAN LOCKYER: Take your time.

MR. CLUFF: For the record, my name is Cody Cluff. I'm Governor Pete Wilson's appointee to the South Coast Air Quality Management District, where I've been actively serving on the Board since December.

I'm not native to California. I was born on a dairy farm in Nampa, Idaho and spent the first ten years of my

life in rural parts of Arizona and Idaho.

My family moved to California, Covina, California, which is in the San Gabriel Valley, when I was in the sixth grade. Covina is closely situated to the AQMD monitoring station in Glendora, which consistently reports some of the worst air quality in the country.

That air quality, or lack of healthful air, came as quite a shock to my family. I remember distinctly many days delivering papers when I had to stop midway through in order to rest, in order to stop my eyes from burning, and to be able to breathe deeply.

I'm strongly committed to protecting public health and the environment to make sure that my children don't have that experience, and that in fact we continue to improve the air, and to protect and improve the public health.

My background is certified public accountant. That is by academic training. In 1988, I went to work for the Economic Development Corporation of Los Angeles County, where our goal was to promote Los Angeles as a place to live, to work, and to do business.

In 1988, I helped create a coalition of economists, business, and labor leaders, which was called the Community Air Quality Task Force. The purpose of the task force was to advance technical and policy issues related to air quality that would prove effective as air pollution control alternatives. We were among the first to promote car scrapping and market trading programs.

I also worked directly, serving with the

District, serving on the Air Quality and the Economy Commission, and as member of that commission, participated in numerous public hearings, listened to more than 50 hours of public testimony from hundreds of citizens and small business owners and operators in every county in the South Coast Basin.

I also created a program called L.A. Means Business, which served as an ombudsman to the Los Angeles area, working primarily with small and medium sized employers to resolve issues related to the AQMD and other environmental agencies.

My expertise is in air pollution control. It's not limited to my employment with the Economic Development Corporation. To this day, I continue to work in those issues, having recently received a grant from the MSRC, Mobile Source Review Committee, associated with the District on a novel new program that cuts down on trips related to location and filming in the entertainment industry, and continue to work with companies throughout the entertainment industry and other industries in working on their issues with best available control technologies, and visible emissions, and sustained burns.

I've worked in a detailed manner with all aspects of air pollution control issues, from waivers received through the hearing board, to equipment permitting changes, to facilitating AQMD inspections, to assist in first-time compliance. I've worked with companies to complete their permit applications and to calculate the annual fees and emissions.

I've also assisted companies through new source

reviews, and assisted them in finding and purchasing existing inventories of emissions and in structuring their permit billing cycles to allow for a once annual billing.

I've served on Cal EPA's one-stop permitting committees at the request of staff, and was selected there due to my unique specialty of assisting small business owners and operators in compliance with and understanding existing rules and regulations, and in creating streamlined and one-stop permit services.

These experiences are but a few of the examples. I've also published articles, served as an expert on panels, appeared as a guest on radio shows, and debated air pollution control strategies with noted pundits. In all of these things, my professional opinions and thoughts regarding air pollution control have been sought out by local and regional organizations.

My philosophy with regard to the environment generally and air quality specifically is that it's a matter of public health, and that it is too important to be used as a simple part of a political game.

As it relates to the economy, a healthy and enjoyable environment, or a lack thereof, has become our single most competitive issue.

I've included or brought today with me, which I will share at the Committee's request, a plan or my statement on my environmental plan for the District. But I believe strongly that we can't just build, and build, and build, and then die of smog and -- emphyzema and smog, poor air quality related

diseases.

On the other hand, I don't think we can focus simply on clean air and not have good quality jobs. I believe that good air quality is imperative, that all communities deserve equal access to healthful air, air that is free of toxics, air does not cause asthma, and air that does not prematurely shorten life.

Having said that, the ability to sustain an economy is also important, and consequently, many of the changes we need to make must be made gradually and in a predictable manner. Nevertheless, they must be real improvements in air quality, not paper maneuvers designed to give the perception of improvement without real progress.

I've dedicated myself to the area of air pollution control where the rubber meets the road, where the work gets done, and people's lives are affected, not in trying to deregulate, but in trying to assist with compliance, and where necessary, effectuate change by providing enlightened options.

Thank you for taking the time to listen to me today, and I'm happy to answer questions.

SENATOR LEWIS: Mr. Cluff, when I was a youngster in grade school back in the '60s, I recall times when PE class was canceled because the air was so bad.

How does the air quality in the Basin today compare with how it was back at that point in time? What's the direction?

MR. CLUFF: I think there's no question that the

number of smog alert days has declined over the last 50 years, down to one last year. We've made substantial and remarkable progress.

I don't think that can be limited to where we have to go. Our technology today would indicate that we're going to continue to make good progress, but we still have other issues out there. Issues like the emissions of toxics and particulate matters are very important to our health and are issues that we will face in the next decade.

SENATOR LEWIS: Do you have any quantifiable numbers as to how much better the air is today? What statistic would you point to, to show at least the trend is moving in the right direction?

MR. CLUFF: I think that the most dramatic -- the most dramatic decrease, or the most dramatic symbol of our progress, would be in the number of days where we failed to meet the federal implementation standards on where we've had first stage smog alerts. And as I said, that number has improved from 80, I believe, in 1986, or '79, to one last year.

SENATOR LEWIS: One of the points that your detractors are making is that they don't think you meet the qualifications for the appointment relative to your background. You're not a physician; you're not a chemist, whatever the code says.

But there is some possible little room on the specialist in air pollution control, which I guess has enough little room attached to it. Is that where you're making your claim that you qualify under the statute?

MR. CLUFF: Yes. Among the more technical requirements or possible requirements is a statement that the person should be an air quality -- an air pollution control specialist. And I feel that I've developed a very unique specialty in dealing with small and medium sized employers in assisting their compliance through the permit process.

In fact, I've been selected over many times to sit on committees and hearing boards specifically because of my unique expertise in dealing with companies, by walking through their plants, dealing with their specific permitting issues, their inability to be able to meet BACT -- that's best available control technologies -- to assist them in finding alternative methods of compliance, and working through the process with the District.

Many of these small businesses are overwhelmed by the number and amount of environmental rules and regulations they face. They don't know where to start. They're afraid to call. In many instances, they have heard bad rumors or negative consequences of companies that have tried to comply. And they need somebody who has experience in working with the District and can hold their hand, and take them through that process.

And in my -- my work as an economic development development professional is to promote the greater Los Angeles area as a place where companies can continue to do business, and where our air quality and environmental regulations are actually a benefit and not an opposition. And my unique ability is to sit down and work them through the process, and help them stay in the area.

SENATOR LEWIS: The other point that seems to be on the mind of a number of your detractors right now is that relative to what's going on with the contract renewal of Mr. Lents. I've read at least one newspaper article that inferred that this whole thing was being correographed by Republican Legislators.

Is this a partisan attack on Mr. Lents that's going on in the South Coast District right now?

MR. CLUFF: No. I believe, in my opinion, it is not.

We have two Democrats out of the six that have voted not to renew Mr. Lents's contract and four Republicans. And on the other side, I believe they have at least two or three Republicans who have voted to sustain Mr. Lents.

I have not had contact with members of the Republican Party, Legislators, on this issue, and have not been asked to vote one way or another by any state elected official in any way, shape, or form.

In my opinion, Mr. Lents has been quoted recently by The San Francisco Chronicle as saying that we are drifting along on past progress. And I think we have far too much at stake to drift along on past progress. We need to aggressively attack the issues that face us, and to find creative solutions that will protect public health.

SENATOR LEWIS: Thank you.

CHAIRMAN LOCKYER: Were there any other things that Members want to ask at this point? Do you mind if we take testimony from supporters and opponents? Either way is fine.

I'll ask people to come forward, but just jump in if there are questions.

MR. CLUFF: Do I stay up here?

CHAIRMAN LOCKYER: At least stay for the supporters. Stay there.

Those who want to comment, come on up.

MR. ABRAMOWITZ: Hi. Thank you, Mr. Chairman, Members of the Committee.

My name Is Mark Abramowitz, and I am President of Community Environmental Services in Yorba Linda.

The last time I was before this Committee was for the confirmation of the Governor's prior SCAWMD appointee, Hugh Hewitt. I came with hatchet in hand.

This Committee had the great wisdom to reject Mr. Hewitt.

Today I'm here to ask you to confirm this appointee, Cody Cluff, as the Governor's representative to the AQMD Board. I ask you to confirm him for three reasons.

First, Mr. Cluff meets the Health and Safety Code requirement that the appointee be a specialist in air pollution control. And I'll expand on that in a minute.

Second, in the time he has sat to the Board, he has done a good job based upon the opinions of those who have worked with him since he became a Board member, including, strangely enough, those who have sent letters in opposition to his confirmation.

Lastly, Cody possesses the leadership, skills, drive, and commitment to clean air that can renew our progress

toward a breatheable Southern California.

In assessing Mr. Cluff's qualifications as Governor's appointee, I believe I have a unique perspective and good qualifications to judge that better than perhaps most of those that have expressed the alternative view.

I've been active in air quality issues for 15 years. I've worked as Statewide Air Quality Director for CBE, Citizens for a Better Environment then, Communities for a Better Environment now. Served as Vice President and Program Director for the Coalition for Clean Air. Served as Chairman of the hearing board of the South Coast Air District. Served as chief negotiator for the Environmental Caucus in the negotiated rule making for off-shore drilling -- for the off-shore drilling air quality suit, California vs. James Watt.

I've served as board member of the Los Angeles League of Conservation Voters. In fact, at one of our last events, Mr. Chairman, I happened to see you there and had the great fortune of talking with you.

I've also taught a number courses on air pollution. And yes, I'm the Abramowitz in Abramowitz vs. EPA, the citizens' suit that forced EPA to reject the air plan in South Coast and ultimately prepare a federal implementation plan or FIP.

I could go on, but I think I've pretty much well established my qualifications for evaluating the air quality specialist and specifically Mr. Cluff.

In my opinion, not since Gladys Meade, two administrations ago, has a more qualified Governor's appointee

at the been selected. In fact, the provision setting qualifications for the Governor's appointee came after a previous Governor appointed Gladys's successor. That person's only qualification was a disdain for controlling air pollution.

Yes, the qualification section in the Health and Safety Code is broad. We all knew it when it was drafted. It was a compromise. But its purpose was to ensure that someone with some experience in air quality control would be appointed. And since it was passed, the confirmation process has approved those less qualified than Cody, but with some experience nonetheless.

Please don't hold Cody Cluff to a different standard than his predecessors. Pollution control issues have been the focus of Cody's air pollution involvement. But unlike others, his work didn't just include pontificating on this air pollution control policy or that air pollution control policy.

Cody has been a specialist, providing many companies help with BACT issues and pollution control compliance. He's done this with a focus on small business, an area of compliance and control that few air pollution specialists have expertise in anywhere. And in providing assistance, Cody has performed the nuts and bolts tasks like determining control requirements and preparing the technical information necessary to apply for a permit.

When the Governor appointed Cody, many environmentalists were relieved that he had apparently taken great care in choosing an appointee. We were pleased he gave the nod to a moderate. In fact, I put out a press release,

along with Tom Soto, former President of the Coalition for Clean Air and a board member of several environmental organizations, praising the Governor for his choice. You should have a copy of that release attached to the letter I've submitted.

Cody's done good work, at least according to environmental group staff I've talked with, people who were skeptical at first. Not that environmentalists have agreed with him on every issue. They didn't and won't. The fact remains, he has performed well.

I'd like to leave you with the thought that there are some people destined for public service. These people care and want to make a difference. They want to do something for the community. Some of them are even good at it. These people are less common you might think.

I think Cody is one of that rare breed. If you confirm him, you'll see him shine in that role. If not, he'll be remembered as the good one that got away.

Thank you very much.

CHAIRMAN LOCKYER: Thank you.

Are there questions Members would wish to ask? I might if they don't.

It's very difficult, but we're friends and share a common perspective and philosophy in most instances. So, I guess they're appropriate for me to be asking.

I noted in your comment the emphasis on the words "some experience", because that would sum it up. That is, it seems to me Mr. Cody has some experience being around air quality experts, but not being an air quality expert.

I don't think hanging around air quality experts is a form of experience, personally, that meets the statutory requisits, which are rather explicit: a physician who has -- you know, and it surprises me that the Governor doesn't know any of these people, frankly -- but a physician who has training and experience in the health effects of air pollution; an Environmental engineer; a chemist; a meteorologist or a specialist in air pollution control.

It's obvious to me that these are specialties we're talking about. And I've asked our staff to review the history of confirmations, and what kind of qualifications people had. I note that they fit these categories, except for Mr. Hewitt, who wasn't even close to these criteria. The prior appointees, Steve Albright, Jack Witz, fit. They were doctors of environmental science, and employed full-time in Colorado in air quality matters, and so on.

So I guess I start just by having a different interpretation of the statute, and frankly, an interpretation that was the basis for the rejection of Mr. Hewitt, that he just didn't have the requisite qualifications.

I don't think your assessments of his philosophy are an adequate substitute for the experience that the statute requires.

Now, let me move on to the more difficult thing to ask. Any business relationship between the two of you?

MR. ABRAMOWITZ: Currently there is no business relationship between the two of us.

In the past there has been some. I've done some

work for the -- for the EIDC, and I performed some of those tasks after knowing Cody for several years.

With respect to your other comment, I would respectfully disagree with you on two counts. The statute -- I was referring to the statute rather than Cody with respect to some experience. And actually the environmental --

CHAIRMAN LOCKYER: It doesn't say some experience in the statute. It says a specialist the air pollution control.

MR. ABRAMOWITZ: Correct.

CHAIRMAN LOCKYER: That's the most general category enumerated.

MR. ABRAMOWITZ: And that was the big compromise. In fact, the environmental community wanted somebody that had a lot of credentials -- a meteorologist, a doctor, et cetera. But this thing got put in, and that happens in legislation.

Cody has not just hung around these folks. He's had many years of experience in dealing with the nuts and bolts issues and doing the nuts and bolts analyses that many of us would find boring. And the things that specialists do, the BACT analyses, the permit analyses, the compliance assistance specifically related to small business. He's had a substantial amount.

I had forgotten actually about Jack Witz, but certainly Cody's had a lot more experience than, say, Steve Albright coming into this process.

And I opposed Hugh Hewitt last year because he didn't meet any of the qualifications, so I would agree with you there.

CHAIRMAN LOCKYER: Frankly, I don't see any way to consider Mr. Cluff a specialist in air pollution control. He works for the movie industry. He used to work for Mayor Riordan, and so on.

Let me ask you the question again about the business relationship. You perform consulting work for the group he heads up?

MR. ABRAMOWITZ: That's correct.

CHAIRMAN LOCKYER: How long ago?

MR. ABRAMOWITZ: I did some work probably starting about a year-and-a-half ago. I did some work with respect to the implementation of AB 1299, Peace, which set up permit consolidation zones. And EIDC asked me to take my expertise in regulatory development and work with Cal EPA on some of those regulations.

CHAIRMAN LOCKYER: That went for how long?

MR. ABRAMOWITZ: That probably went until probably about December, maybe.

CHAIRMAN LOCKYER: Okay.

Are there other questions?

CHAIRMAN LOCKYER: Is this of Mr. Cluff or the witness.

SENATOR AYALA: For Mr. Cluff.

CHAIRMAN LOCKYER: All right, thank you.

MR. ABRAMOWITZ: Thank you.

SENATOR AYALA: As you well know, the Smog Check Number Two is a federally mandated program.

Do you support that program.

MR. CLUFF: Yes, I do.

SENATOR AYALA: Can you tell us what steps you have recommended since your appointment to the Board that would address the impact air pollution has on our children out in the Riverside-San Bernardino areas?

Orange County and L.A. County, they're the polluters, as you well know, and you blow it into our areas. They're not too concerned about the Board putting restrictions.

But what have you recommended since you've been on that Board that would address the effect air pollution has on our children?

MR. CLUFF: The two things I've done specifically, and I've been on the Board only since December, and so these are the areas that I've been able to deal with.

But one is Rule 2506, which was a reclaimed rural area sources in which there was sort of a backdoor attempt to bring in VOCs as a part of the trading program.

I worked with the Coalition for Clean Air there to hold up the bill -- the rule for a month while we did continuing negotiations between a regulatory flexibility group and the Coalition for Clean Air and the NRDC, and ultimately that led to taking out the VOC components of that program, which the environmental community had serious concerns about.

The second thing I did was, as a part of 2501, I supported a renewed look at the toxics issue by calling -- including in the support of 2501 a new workshop on toxic risks in order to evaluate the effects of toxic emissions in the South Coast Basin.

SENATOR AYALA: Thank you.

MR. CLUFF: I would also support the current legislation that's being sponsored or supported, I'm not sure which, by the Lung Association, which would call for notification of day care centers about the air quality on any given day.

SENATOR AYALA: So, you wouldn't support, necessarily, the legislation to do away with Smog Check Number Two?

MR. CLUFF: No, I would not. I support Smog Check Two. In fact, I'm sure that I voted as part of the Legislative Committee to support that item.

SENATOR AYALA: Thank you.

MR. LAIRD: Good afternoon, Senator Lockyer and Committee. My name is Ed Laird. I am a small business owner in Southern California. I own Coatings Resource Corporation. It's a small specialty coatings manufacturer in Huntington Beach.

And Senator Lockyer visited me and my facility sometime ago on air pollution matters.

CHAIRMAN LOCKYER: When I read through the letters of support, you're actually one of the ones that I considered credible, that wasn't just a political friend or something of that sort making a comment.

I'm curious to hear what you're going so say, Ed. Go ahead.

MR. LAIRD: Well, thank you.

Besides owning a specialty coating manufacturer, I also an engineering firm called EQC, Environmental Engineers.

It is a 12-year firm that helps medium sized business through the maze of air pollution regulations.

I have been a paint chemist in the Los Angeles Basin for 35 years. I had the first coating to meet Rule 442(k), which is the first technology-forcing rule on coatings.

I'm here today as a representative of Small Business Coalition. It's a coalition of all permit holders of at least 4,000 members that interact with regulatory agencies.

we have followed the activities of AQMD for the past twelve years.

The Small Business Coalition endorses Cody Cluff this morning as a member of the South Coast Air Quality Management District's governing board. We've known, and I've known Cody personally for six years. I first met him at the Air District when we were workshopping Rule 1136. He did participate in that workshop, and he is quite knowledgeable of the workings of the AQMD.

He has since participated in Reclaim, Home Rule, and other activities that I have known him personally to be involved in.

He is knowledgeable about our rules and regulations and would make a very good permanent member of the governing board.

We have had a great turnover in our board recently, and I think that we need somebody with Cody's expertise.

I thank you for allowing the Small Business Coalition's input. And we appreciate that if you would confirm

Cody Cluff as the Governor appointee. Thank you for your consideration.

CHAIRMAN LOCKYER: Let me ask how you feel about replacing the management team at the top. Is that something you're in concurrence with?

MR. LAIRD: I am in favor of Dr. Lents leaving the District, yes.

CHAIRMAN LOCKYER: Would you explain why that is?

MR. LAIRD: Why I changed my mind since we've talked.

CHAIRMAN LOCKYER: Yes.

MR. LAIRD: Basically, when we were going through the depression of '94, I think the District made a good window dressing of the fact that we needed -- that there was a real burden of regulation on the small business owner.

Since then, I believe that they have returned to the ways of the '80s, the permits being slowed down. We have permits from small business people that have been 18 months waiting for a permit out of the South Coast District.

CHAIRMAN LOCKYER: Is that because there's half the staff that there were at the peak?

MR. LAIRD: I don't believe so. I believe that the staff has a very low morale. I think they want to see change in leadership as well. I believe that the environmental community wants to see a change in leadership, but they're afraid of change. I think that most --

CHAIRMAN LOCKYER: That's why they're not saying that?

MR. LAIRD: Yes, yes.

Most of the business community would like to see a change because we think that Dr. Lents is too aloof. He has applied for other jobs over the past three years. He did not get them.

I believe that, quite honestly, him asking for a three-year contract is similar to a man that would probably take the contract, and in a few months come to the conclusion that he is not any longer viable, and then have a buy-out. He's been on a one-year contract for the last 11 years. I would say leave it that way, or let's have some new leadership.

CHAIRMAN LOCKYER: So, leaving it on one year doesn't offend you either?

MR. LAIRD: I think that we need a change in leadership. I really do.

CHAIRMAN LOCKYER: Other questions from Members?

Thank you.

MR. LAIRD: Thank you, sir.

CHAIRMAN LOCKYER: Is there anyone else that would wish to comment? Please.

MR. FISHER: Good afternoon, Mr. Chairman and Members. My name Gene Fisher. I'm here in support of Cody Cluff being confirmed to be a member of the South Coast Air Quality Management District Board.

In the way of my background, I worked for the South Coast Air Quality Management District for more than 30 years. I have a Master's degree in environmental studies, a Bachelor's degree in chemistry from UCLA.

For the latter part of my career, while I was at the SCAQMD, I represented them here before the Legislature and also before local governments throughout Southern California.

I suppose I lobbied most of the bills that gave the District what seems to be a lot of authority because we had a very tough job facing us.

I think today the key word is public health. It's always been with me, and certainly to debate the issues before this body with those who have economic interests and those, certainly all of us who have health interests.

I give that in the way of background in saying that I've talked to and worked with a lot of people as they came before the District and certainly advocated their own issues.

I found Cody Cluff to be fair as a person who lives in Southern California and raising a family. I heard him today say that, in fact, he lived in the San Gabriel Valley. That's one of the smoggiest places in the area.

I live the South Central Los Angeles. I am sensitive to the fact that we have toxics continuing to be a negative impact on our public health population. Certainly in those areas of low income, certainly the issues of environmental justice should be put on the table.

I've been able to talk to Mr. Cluff about these issues, and sometimes we didn't always agree, but always we did discuss them, and I thought in a fair manner.

I've been able to observe him at distance as a public member, as how the District Board was continuing to make its progress. I find that more than anything else, a

reasonable, rational approach to the information that's presented the way I understand the legislation being drafted is what is desirable.

He seems to have those qualities. I found that to be the case. Based on that, I would continue to support his confirmation. Thank you.

CHAIRMAN LOCKYER: Thank you, sir.

Other questions? Thank you, sir.

Is there anyone else that would wish to comment on the support side of the discussion?

If not, let me ask if there are any other questions. Yes, Senator Ayala.

SENATOR AYALA: I have concerns about the confirmation of Mr. Cluff.

Outside of the unions, forget about the unions. Every one of them's against you. Forget about them.

What bothers me is that we have letters of opposition from the Environmental Media Association, Communities for a Better Environment, Coalition for Clean Air, California League of Conservation Voters, the Sierra Club, Natural Resource Defense Council, Planning and Conservation League, and the Coalition for Clean Air.

If you're doing such a good job, why would these people be against you?

Never mind the unions. Forget about the unions. We understand where they're coming from.

But these are people who're concerned with the cleaning of our area.

MR. CLUFF: I won't address unions for a long point, but I have a lot of union support.

In terms of the environmental community, I believe that the opposition to my confirmation came after my vote to oppose the renewal of Dr. Lents's contract.

SENATOR AYALA: That's not before us. That doesn't matter to me.

I just wonder why these people are opposed. If that's the reason, why would they be concerned that you're going to lose that person if you're doing a good job.

That may be the ultimate goal that some people might have, but it's not before us today.

CHAIRMAN LOCKYER: You think that's the reason?

MR. CLUFF: In my opinion, I think that that's the reason.

I know that I have worked on very specific rules with the Coalition for Clean Air and the NRDC, and that they have called me afterwards to express thanks for the work that I've done on those bills.

I think that it would be fair to say that my historic record would lend some to fear that I would favor business over the environment. I think that my work thus far on the Board should show a very good balance, especially since some members of the larger business -- the big business community have opposed portions of the work I've done there.

I can't speak factually for someone else. I can only tell you what I think.

CHAIRMAN LOCKYER: They may be present. Some of

those groups you named may wish to make a comment, and we'll hear from them.

I guess I would mention, on the worry that you perhaps tilt toward business rather than environment, the candlelight vigil in '93 is probably an example of commentary about the harmful environmental compliance regulations, was your quote, that would perhaps give them some reason to worry.

I have a different one, and I don't know that it will be addressed, particularly by the various groups that will comment. But I want to be honest about it, Mr. Cluff.

I don't know you. I don't know Dr. Lents and most of the members of the governing board. As a Northern Californian, I'm not one who attends these meetings and claims to have any personal expertise about the matter. So, I try to look at the biographical information, the news clippings, whatever I can get that gives me some objective sense of a person's role, and philosophy, and perspective.

And I'm concerned about what seems to be the one consistent pattern, and that is to be what I would characterize as a disruptive force. I saw it when you were involved in the recall of the Republican mayor and City Council in Covina. I saw it when you shut down the film office, the County Film Office, and created your own, where you then went to be employed. I see it after five meetings of the Air District, turning it topsy-turvy, and firing people who have been there for a decade.

So, there seems to me to be a pattern. Now, some might describe that as the energy and the desire to change

things and get things done. I see it more destructively than a creative effort. But it does seem to be a pattern that I can see for 15 or 20 years, and it's what gives me pause about confirming.

Clearly, you are not the same as Mr. Hewitt, and I agree. I mean, he wasn't even close to meeting the statutory qualifications.

And I most especially am appreciative of your efforts to keep the California film industry in California, and keep the jobs here, and keep the industry, help with its growth and vitality. You've done that, and those are good things. And I'm glad you're doing those.

Regardless of the outcome of this, I assume you'll keep doing that, and that's good.

Let me not talk any more and just ask if there's comments or questions. Yes, Senator Hughes.

SENATOR HUGHES: Who's coming up to speak next?

CHAIRMAN LOCKYER: The opposition.

SENATOR HUGHES: Before the opposition speaks, I haven't made up my mind yet.

I want to be fair and give you fair chance to express where you're coming from so I can get an opportunity. That's one of the reasons that I don't meet people who are aspiring to these positions until the day of judgment. So, my mind is unclouded at this point.

But you mentioned the fact that you were -- and I wrote it down -- an expert in healthy air and environment, and a specialist in air pollution.

How did you become a specialist in air pollution? I'm really curious, because you said by training you were a CPA. From an academic background of becoming a CPA, how did you acquire your specialist status? You are a self-certified specialist, or have you been certified by someone else as a specialist of air pollution?

MR. CLUFF: No, I've not been certified by someone as a specialist. I think the term in this case, air pollution control specialist, is a rather nebulous term. I think this Committee will have to decide exactly what it means today.

SENATOR HUGHES: But is your perception of yourself as being an air pollution specialist based on things that you have done.

MR. CLUFF: Yes. I've spent -- since 1988, I have spent a good portion of my life working directly on an across-the-table basis with small and medium sized, mostly small employers. From a small General Mills plant to the manufacturer of drum heads Remo, to Paper Pack, a paper manufacturing firm, on and on. Small businesses that employ less than 150 or 200 people who do not know how to fill out their permits. Who do not know how to calculate their emissions. Who have calculated their emissions wrong and been -- are facing potential fine, or who have received a notice of violation, or a notice to comply and are scared and don't know what to do.

These are people who are not expert in any sort of environmental regulation. They're just trying to get along.

They're just trying to run a business.

The service I've provided since 1988 or 1989 is to help those people through a rather complicated and difficult process. And that extends to any problem they might have, but it's not the greater policy issues. It's not the technology of how NOX and SOX are formulated, or how ozone affects the environment. Those are not issues that I have expertise in.

The area that I have expertise in is helping the guy off the street who doesn't know how to comply figure out how to get it done.

CHAIRMAN LOCKYER: Mr. Cluff, on this point, these are the ten years, basically, that you were involved in one aspect of the film office? You said since '88. That was essentially either the Governor's staff, or the county office, or the current film office.

MR. CLUFF: Among them, I oversaw the creation of what was at the time the Los Angeles County Film Office inside the Economic Development Corporation.

CHAIRMAN LOCKYER: But I mean, during those --

MR. CLUFF: I had an executive director there who performed the functions of the Film Office.

But yes, you're correct.

SENATOR HUGHES: Then you said that you were involved with many environmental groups.

Are you acquainted with a group that was formerly known as the Citizens for a Better Environment, California?

MR. CLUFF: I've worked with CBE, Citizens for a Better Environment.

SENATOR HUGHES: Do you know that group?

MR. CLUFF: Yes.

SENATOR HUGHES: And now they have a new name called Communities for Better Environment?

MR. CLUFF: Yes.

SENATOR HUGHES: Well, this group wrote me a letter. I don't really know them. And in their letter, they pointed out two constituency groups of mine that I'm very, very concerned about, two cities in my district. One is Lynwood. And you know that Lynwood, for a long, long time, has had the highest carbon monoxide level in the whole region of Los Angeles County.

I've always been concerned about that, because Lynwood is a very struggling community, and they're trying to get back an economic stronghold. But one of their problems is that a lot of the people in Lynwood have older cars. And because of the topography of the very location of Lynwood, it's in a bad location with stagnant air, and carbon monoxide is even harder to get rid of.

So, the people are a poorer working class community, and they can't buy the best of cars and keep them in the best of shape.

And another area where it's very high risk is Gardina. Gardina has a low income community suffering from a cluster of cancers and other related illnesses that have to do with environmental pollutants.

So, those are two areas in my district. So, as you said that you have been involved with environmentalist

groups, and you're concerned about the health of your family, as I am concerned about the health of mine.

These two, this committee pointed out these two communities in their letter. And they say that they think that your interest is largely economic. But how can it be economic if you won't have any people to get the jobs that you're going to create in the area, if all the people are sick, or cancerous, or unable to breathe because of the air pollution?

Why wouldn't this group be for you instead of against you? And what's so persuasive on my part is the fact that they talk about two areas that I know are having great trouble economically and environmentally.

So, how do you answer that?

MR. CLUFF: I think it's very difficult to separate out the economic issues from the environmental issues. On the one hand, without a healthful environment, we can't attract new employers, you know. And on the other hand, without a healthy economy, we can't employ those people. So, it is important to strike a balance.

Let me tell you what I'm concerned about specifically with regard to this issue.

Seven years ago, the Senate passed a bill, Senate Bill 2566, which is a toxics bill, which in the first phase Identified 348 companies that are toxic emitters. Of those 348 companies that were identified to be emitting toxics, potential carcinogens, at a risk level of more than one hundred in a million, only 150 of those companies have had technical analysis performed by the District on them. That means that less than 50

percent of the companies have been reviewed by District staff, even though we've had 15 full-time employees and 5 full-time outside contractors, and more than 7 years to look at them.

That's issue of environmental justice. It exposes those communities to undue carcinogenic risk, and it's an issue that has to be dealt with, clearly and concisely.

SENATOR HUGHES: So, what would you do? What proposal would you have for reducing carbon monoxide levels and the ozone levels in the Basin, specifically in these two cities that I brought up, Lynwood and Gardina? What solutions would you propose to them?

MR. CLUFF: I'm not sure that I know the specific solutions as I sit here. I can tell you that I am committed to working with those communities and CBE to identify the best possible solutions to put forward.

The one thing that I have done already is that I've supported the creation or the establishment of a workshop on toxics to relook at the issue of toxic emissions, that we need to look at the way -- the standards that we've set, and we need to take a look at how those are impacting the communities.

In terms of carbon monoxide specifically and ozone issues specifically, I would look forward to an aggressive staff bringing forward appropriate rules and to supporting those rules in order make sure that those communities have equal access to healthful air.

SENATOR HUGHES: I have another question to ask you.

Do you think that the concern about the

disproportionate effects of air pollution and other environmental hazards on the minority and low income community is justified?

MR. CLUFF: Yes, I do.

SENATOR HUGHES: Or are they just crying poor?

MR. CLUFF: No, I think if you'd have asked me the same question five years ago, I might have had -- I would have questioned the concept.

But I believe strongly that there are areas of what we call toxic hot spots where communities are disproportionately affected, and they're affected strongly by the emissions of toxics which can damage the health of people.

SENATOR HUGHES: Do you think that is contrived or planned that way? That these communities are not as sophisticated or as well versed on environmental issues, or do they have the luxury to be active in the environmental groups as do more middle class areas?

MR. CLUFF: I think historically, they probably have not had access to the kind of lobbyists that the business community has had.

SENATOR HUGHES: Nobody needs a lobbyist to represent them if they just can't breathe. Nobody needs to convince me if I'm an asthmatic that I can't breathe, if I live in the Basin that's filled with carbon monoxide. So, that's not a good excuse.

All right, let's get back to the workshop --

MR. CLUFF: I guess I was trying to agree with you.

SENATOR HUGHES: Okay. Let's get back to the workshop thing that you talked about. You said that you would encourage more workshops.

This is to educate the uneducated about the quality of air that they should be breathing? How much good is that going to do them?

MR. CLUFF: No, I'm sorry. What I'm speaking about specifically is, at this point, an effort to educate the governing board at the South Coast District.

What you'll note is that many members of the District have turned over since toxics rules were adopted some years ago, and that there is a lack of understanding on the Board about the negative consequences of toxic emissions and the actual risks that can caused, that the actual risk of causation of cancer, asthma, and other issues.

What I've asked, supported and asked for, is that we revisit those, the Board, so that we can revisit the issue of toxic emissions, and analyze the District's current standing on those issues, as well as look at the failures of the District in pushing forward on the toxics bill.

SENATOR HUGHES: Now, looking at the statute, it clearly defines the kinds of persons that they think would be best qualified for fulfilling the position that you seek. And that's, number one, a physician -- not just any old physician, but a physician with training and experience in the health effects of air pollution.

Don't you think that a physician with expertise would be the best person to protect my constituents in Lynwood

and in Gardina, realizing that those cities have these problems? Do you think you could compare yourself to someone like that?

MR. CLUFF: I wouldn't pretend to make that my area of expertise or specialty.

I would tell though -- and you know. You've been an elected official for years. You're very astute at these things -- that there can be more to just understanding the issue.

I have a unique area of expertise. I know how to move forward critical issues, and I'm committed to moving forward on the issues of protecting public health, particularly in disadvantaged areas. And I think that I can do a very good job of that using my area of specialty.

I am not a doctor.

SENATOR HUGHES: The person who's sitting next to you, an imaginary person, is an environmental engineer.

What could this environmental engineer offer that you couldn't offer, because you all ready told me that you were a specialist in this area, even though not trained academically, but trained practically?

MR. CLUFF: I think that an environmental engineer would have a very detailed technical expertise. It might depend on the specific area, but probably would have a lot better understanding of how NOX reacts to sunlight, how it gets converted, what the specific effect of ozone is from a chemical standpoint.

SENATOR HUGHES: Then you've gone through the

next person, which is the third category, in which they talked about a chemist. And you just pointed out that a chemist could piece these things together and tell us about the chemicals in the air and in the environment. So, that you don't fit Category One, Two, or Three.

But then there's a meteorologist. What would the meteorologist be able to contribute that you haven't been able to contribute?

MR. CLUFF: I would imagine that he would be able help us understand how weather conditions and patterns might affect smog in particular areas, and across the Basin generally.

SENATOR HUGHES: Well, you know, this really kind of bothers me, because I'm asking you for documentation as to how you acquired your specialty, because you said, I've been a specialist.

Well, I've been on boards. I've been on some kind of commissions, but never on anything that I wasn't academically prepared to be on.

So, I've been trying to find, and I'm an acamedician by profession. I'm trying to find, I'm reading your vita and your experience. I'm trying to find the academic, the way that you master academic knowledge.

Sometimes there are more things that you can learn by not just being in the classroom, but by being out into the industry and finding out.

How did you accumulate this? I look at your work experience. You are on the Council of Laborers. How did that prepare you for this?

You were on the Foundation for Fair Contracting. How did that prepare you for this.

MR. CLUFF: I don't think that's me.

SENATOR HUGHES: No, I'm sorry. I'm looking at the wrong one. I was wondering. That's why I was confused.

I know I looked at it before, and I was still trying to find out how you were prepared, other than your CPA experience? How did you pick up this knowledge and --

MR. CLUFF: As a practitioner, what I have been is an ombudsman, a person to work between those affected by regulation and those who regulate. It's a very specific area of specialty.

I have set and worked with thousands of businesses over a long period of time on specific air quality, air pollution control issues. How they get their permits. What the permits require. How they file the permits. How they comply with BACT requirements. How they get through new source review. How they find emissions when emissions aren't available. Taking them Through inventories of emissions that can be purchased.

I've dealt with those businesses, one-on-one, person by person, problem by problem.

SENATOR HUGHES: All right. You were Controller for the Burket Contromatic Corporation of Orange County. How did that prepare you?

MR. CLUFF: I think my training, first of all as the Controller for Burket Contromatic, I was also responsible for all their manufacturing inventory control and distribution

program.

So, what my training, I think, as a certified public accountant and as a corporate controller has done is given me a good understanding of process and procedure, and how to work through complex problems on behalf of companies in order to solve their air quality issues.

My actual specialty and expertise in air quality did not come until after I left Burket Contromatic, however, when I started the Community Air Quality Task Force program, and when I started the L.A. Means Business program.

SENATOR HUGHES: As the Associate Director for L.A. County Film Office from '87 to the present time, how did that help you to develop this expertise in air quality?

MR. CLUFF: Again, working -- although, I think you'll find that until the last couple of years, that's been a fairly small portion of my time, perhaps 10 to 15 percent of it.

I've worked with numerous companies in the entertainment industry on, for example, film development, film labs development, labs where they develop film for movies, and their best available control technology.

SENATOR HUGHES: What did that have to do with air quality?

MR. CLUFF: Because they have air quality issues as well that have to be worked through with the AQMD.

SENATOR HUGHES: Only air quality issues as it would help them to reach, to meet the qualifications to be able to function.

MR. CLUFF: Yes.

MS. HUGHES: So, that's remote.

And then from '80 to '84, you were production manager for Crystal Specialties, Incorporated, in Monrovia.

How did that help you to develop your air quality expertise?

MR. CLUFF: Well, Crystal Specialties is a galium arsenide manufacturer that has especially innovative methods for growing horizontal crystals in the semi-conductor manufacturing arena.

I was there trained very specifically in a number of technical areas, including the analysis of stress through the crystal, the growth. That is, the temperature variations versus the chemical combinations of arsenic, and galium, and talerium, and selenium.

SENATOR HUGHES: Did that help you to develop this expertise?

MR. CLUFF: It gave me a very good background in chemical and physical properties, and --

SENATOR HUGHES: This is what I'm struggling for. I'm trying to find out what work experience that you had that helped you to develop the expertise that you said you have, right? So, I'm having a problem.

I went through all of these categories, from physician, to chemist, to environmental engineer, to meteorologist, to all of these other things that you said.

Your work experience, it sounds like the only work experience that really helped you was this one that you mentioned. And I'm glad you mentioned that, because I've been

looking for something.

MR. CLUFF: I've spent an awful lot of time with the actual rules where they affect the business community.

SENATOR HUGHES: No, you talked about you spent time with rules.

I'm talking about spending time with expertise. You have become an expert in knowing what the rules are, but knowing what the rulings are doesn't tell us what effects they will have on your community.

You know, I really get concerned, because I want Lynwood to succeed economically. I want Gardina to succeed economically, just as I want all of these other communities within the 25th Senatorial District to succeed economically.

I know one of the problems that we have, we don't have enough jobs, and we don't have enough businesses, small or large.

So, I want to hear the rest of the testimony, and maybe before we get finished with all of this, you can really point your finger to the reasons why you believe you have developed into an expert in air pollution environment, not just your service on the Board. Because I'm looking for that expertise that's going to save the lives of my constituents.

So, I'm not going to ask you any more. Maybe when I hear the other testimony, you can react to them, if the Chairman will allow you to, and then you can say, "See, that's where I have developed my expertise."

CHAIRMAN LOCKYER: Senator Ayala.

SENATOR AYALA: Mr. Cluff, other than the litany

of letters that I indicated earlier that were from environmental groups who oppose your nomination or your confirmation, every member of the Board of the South Coast Air Basin Board in my area, except for one, also opposes your confirmation, saying that you're very disruptive at those meetings.

Can you tell us why that is so? Every member of your Board that lives in my area are not very happy with you.

MR. CLUFF: They said that I'm disruptive at the meetings?

SENATOR AYALA: In fact, the Chairman mentioned it. That's what reminded me that I have an indication that you're very disruptive at the meetings. I don't know what they mean by that.

MR. CLUFF: I think the Chairman very accurately described many of my past involvements with the District.

On the Board, I think that I have been a very good participant, and that I've worked very well, as I mentioned on specific rules with the NRDC and with the Coalition for Clean Air on very specific -- very specific rules.

SENATOR AYALA: But you indicated that you were somewhat of a champion in the clean air movement. We are the recipients in my county of the dirty air from Orange and L.A. with the intrusion from the west.

These people would be behind you 100 percent if you were really, truly cleaning up the air in our area.

So, why would they be in opposition to you if you're doing such a good job?

MR. CLUFF: Well, I'm always a little shy of

trying to speak for other people. In other words, to attribute what their intent is.

SENATOR AYALA: I respect that.

MR. CLUFF: I would say that I think I had a very good relationship with all until the vote was taken on the contract. That's what I think.

SENATOR AYALA: Thank you.

CHAIRMAN LOCKYER: We'll ask for other comment, but I just would like to point out that of the twelve members who serve on this Board, eleven of the twelve are elected officials or public members.

There's only one position reserved for the specific technical experts that we've talked about. I don't think there ought to be twelve out of twelve who are public or elected members. And that, again, goes to the qualification issue.

Let me ask, we left off with opposition comment. Does anyone wish to come forward with your comment?

MR. WHITE: Mr. Chairman, Members, my name is John White. And I'm here today representing the Sierra Club, the League of Conservation Voters, the Coalition for Clean Air, and the National Resources Defense Council in opposition to this confirmation.

Senator Lockyer's observations about Mr. Cluff's experience, I think, mirrors the concerns that we have. We believe that he is not qualified as an air pollution control specialist by his experience, by his training, and most of all his temperament as demonstrated over the years.

We worked closely with Senator Presley on the legislation that put this provision in the statute. And Senator Ayala, I know you recall the hearings that we had with Senator Presley, and the problem of lack of accountability with some of these local officials that got appointed to do the Board.

And there was a determination that the Senator made that at least one of the members of this Board needed to be an expert in the subject matter.

We think that Mr. Cluff is an articulate, able spokesperson for the views that he represents, but that that is not a substitute for experience and expertise.

His recent thoughtful comments, we think, belie his track record in attacking the institution and the individuals charged with carrying out this mission.

The campaign against the incumbent Mayor of Covina, who was recalled on the grounds -- I think primarily that he did not vote with Mr. Cluff's view -- was Henry Morgan, who's a fine elected official, Mayor of Covina, driven from public service as part of this atmosphere that was created by those who wished to change the course of air pollution control.

We think that despite the fine words and comments and friendly gestures of recent months, that there's no evidence in his tenure to date that he has an abiding interest or commitment to public health or the environment compared to what has gone on before.

We think that the record speaks for itself. The only action that he took that we can find in the records was to co-author a resolution on a toxic workshop by Marvin Browdy.

And then, after four months in office, to make the motion to vacate the chair of the Executive Officer.

We think that part of what's happening at the District is a deterioration in the leadership qualities at the Board level. It's becoming in many ways more political than any agency, except for maybe the MTA. And we think that this is not the course that should be taken.

For all the disagreements over the years with the course of action of the District and the controversy from the business community, from the environmental community, back and forth, the progress has been steady. There has been movement and progress.

We think that Mr. Cluff is a part of the community of voices in Los Angeles that has contributed to the debate, but we don't think that he is a part of the solution for changing the drifting long phenomenon.

And despite cordial personal relationships among many of the groups that have worked with him, the environmental community is unanimous in its opinion about his fitness to serve, and we would urge you to defeat his confirmation.

Thank you.

CHAIRMAN LOCKYER: Let me just keep calling witnesses. If there's anyone who wishes to ask a question, just interject yourself.

MR. PRICE: Mr. Chairman and Members, my name is Pete Price, representing the California League of Conservation Voters.

We also oppose the appointment simply on the

grounds that the nominee does not meet any of the requirements set forth in the statute.

You know, Senator Lockyer made a point a few moments ago that only one of the twelve Board positions is designated for a specialist of the sort described. A lot of us come to our current positions as generalists, and generally that's fine and can be valuable.

But this statute calls for a specialist, and not just any specialist, because based on the testimony today, it sounds like Mr. Cluff is a regulatory compliance specialist. But he is not a specialist of the particular sort called for in the statute. And it's very important to have a Board member of that sort.

This Board deals with issues that are scientifically very technical and very complex. And it is very important for there to be at least one Board member who is -- has a strong technical grounding in these issues so that he can, when needed, challenge staff, other interested parties, other Board members, on the credibility of their arguments.

So, we're very concerned that a person who really meets the test be appointed to this position. For that reason, we oppose this nomination.

Thank you.

MR. BROAD: Mr. Chairman and Members, Barry Broad on behalf of the California Conference Board of the Amalgamated Transit Union, and the California Teamsters Public Affairs Council, and the United Food and Commercial Workers.

The opposition of these organizations is based

primarily on the same opposition that you've heard of from the environmental community.

Let me say this. This is somewhat unique in the sense that the opposition was generated in Southern California by these various organizations, Southern California entities: Joint Council 42 of the Teamsters; Local 770 of the United Food and Commercial Workers; and the large ATU local in Los Angeles, Local 1277. It did not originate up here. It's clearly a matter involving concerns within Southern California about this appointee.

And I think it is very much an issue about devisiveness and rancor being added to the issues surrounding air pollution control.

So, on behalf of these clients, I would urge you to deny this confirmation. Thank you.

CHAIRMAN LOCKYER: Yes, sir.

MR. SHABAZZ: Thank you, Senator Lockyer and Members of the Committee.

Some of what I may present is a little repetitive, it's already been said, but it's written out and I'm going to read it.

My name is Rahman Shabazz. I'm here today on behalf of the Los Angeles League of Conservation Voters.

I have a statement that I'm going to read on behalf of the League, but first I'd like to add that I'm also President of the Community Coalition for Change, which is an environmentally concerned community-based organization located in the Athens Park area of South Central Los Angeles.

SENATOR HUGHES: That's in my district.

MR. SHABAZZ: Absolutely, Senator Hughes.

The Coalition represents hundreds of registered voters.

CHAIRMAN LOCKYER: The Greek part of your district, Athens Park.

Excuse me, go ahead, sir.

SENATOR HUGHES: It could be the Greek part if they belonged to fatter national organizations.

CHAIRMAN LOCKYER: Your turn. Go ahead.

MR. SHABAZZ: The Coalition represents hundreds of registered voters but also oppose the confirmation of Mr. Cluff. Reason, because for the past three years, our community has fought with the toxic waste transfer and treatment facility that is trying to obtain a permanent permit to operate in our neighborhood.

While today, many state, county, and federal government officials are listening to what we've had to say after three years, in the beginning, when we first started this struggle, it was only AQMD, under the leadership of Dr. Jim Lents, that listened. Nobody else seemed to care; nobody else responded.

We believe that because of Mr. Cluff's support for small business, communities like ours, besieged by unhealthy, pollution generating small businesses would not get the same consideration from AQMD because of Mr. Cluff's influence on the AQMD boards.

We feel small business must be regulated, and

especially when it endangers the health and welfare of people.

We are for jobs. We need jobs in our communities. But we cannot create jobs at the risk of human life.

We believe with respect to the Los Angeles League of Conservation Voters and our position, we strongly oppose the confirmation of Cody Cluff as the Governor's appointee to the South Coast Air Quality Management District, District's governing board.

California law states that the member appointed by the Governor shall be either a physician who has training and experience in health effects of air pollution; an environmental engineer; a chemist; a meteorologist; or a specialist in air pollution control. California Health and Safety Code Section 40420(c).

The person that preceded me, one of the gentlemen that preceded me said that we should not hold Mr. Cluff to the standard of this regulation.

I disagree. I believe that when human life is involved, we take the precautions necessary to safeguard their life, and this is why we created such a Health and Safety Code.

And I believe, to the contrary, that we should hold Mr. Cluff to that statute as it's written. Mr. Cluff does not meet the qualifications. Therefore, we oppose his confirmation.

In addition to not meeting the qualifications, Mr. Cluff has not demonstrated the leadership and commitment that is necessary to serve as a member of AQMD's governing

board. The AQMD is the regional governmental agency responsible for ensuring that air pollution emissions in the South Coast Air Basin are reduced, and that public health is protected.

Many letters opposing Mr. Cluff's confirmation have been submitted by leading members of several environmental organizations, the labor community, and individuals. Several very cited references regarding Mr. Cluff's lack of knowledge, commitment and leadership necessary to carry out the responsibilities of the AQMD Board.

For example, Communities for a Better Environment included the following statement in its letter opposing Mr. Cluff's confirmation. "Cody Cluff has been a highly visible leader in the unending campaign to render the South Coast Air Quality Management District completely impotent in solving the ongoing public health crisis of the worst air quality in the United States."

Another letter opposing Mr. Cluff's confirmation has been submitted by John Murdock, an attorney who has worked with Mr. Cluff in Cluff's position as head of the Entertainment Industry Development Corporation. Mr. Murdock states, "I have knowledge of Cody Cluff's wanton disregard for air quality issues by virtue of his persistent refusal to enforce laws pertaining to the entertainment industry."

Mr. Murdock cites specific examples in his letter. And I have copies of Mr. Murdock's letter and copies of letters from Communities for a Better Environment that I would like to share with you if you want copies.

The South Coast Air Basin still has the dirtiest

air in the country. In fact, Southern California's air is more polluted than the combined pollution of 40 metropolitan areas, including New York, Chicago, Philadelphia, Denver, and Houston.

Air pollution affects our health and our children's health. It is imperative that all members of the governing board meet the qualifications required by state law and demonstrate a commitment to improve air quality and protect human health. Qualifications and commitment, both are critically important.

Unfortunately, Mr. Cluff has neither. If the South Coast Air Basin is to continue to make progress in the fight for clean air and to protect the public health, the AQMD must be a leader. This leadership must emanate from the top, and that's the governing board.

Mr. Cluff has not demonstrated this leadership during his tenure as a member of the AQM Board. In addition, he has aligned himself with other members of the AQMD Board who have publicly expressed their intent to severely weaken or dismantle the AQMD's authority. Clearly, this is not leadership.

In closing, please vote not to confirm Mr. Cluff's appointment to the AQMD Board. We feel that it would be a mistake to the progress that AQMD has made over the past ten years.

Thank you very much.

CHAIRMAN LOCKYER: Thank you, Mr. Shabazz.

MR. DAVENPORT: Mr. Chairman and Members, I'm Allen Davenport. I'm representing the Service Employees

International Union here.

First of all, I just -- I think I want to endorse all the remarks of the previous speaker. I don't think there's much I can add to that.

Just to reiterate that our view is that Mr. Cluff does not meet the qualifications here. He said himself, he's an economic development professional. He helps people with the paperwork, the notices, the responses. I think that is what a person trained as a CPA is probably pretty good at.

But it's clear to us that what we're looking for here is a specialist in air pollution control who is a scientist, a technician. Somebody who has knowledge of the health impacts of air pollution and the problems related to that. Mr. Cluff simply doesn't meet that.

We represent over 100,000 people who live in this air quality district, and we'd appreciate your no vote.

SENATOR LEWIS: Question.

Would you be here in opposition today if Mr. Cluff did meet this definition in your opinion?

MR. DAVENPORT: If he did?

SENATOR LEWIS: Your principal statement of opposition is because he doesn't meet the qualifications as mentioned in the Code.

If he did meet that status, would you still be here today in opposition?

MR. DAVENPORT: I think I would be. I don't know if I'd be as effective.

I've had a number of experiences here in front of

this Committee, and, you know, there's this element of destructiveness about this.

We have an air quality district that seems to be making progress. It used to be 80 days; now it's one day.

Now, all the sudden, Mr. Cluff is here, and everyone is concerned that it's not working, that there's work that -- things are getting disrupted. And I'm concerned about that, too Senator Lewis.

SENATOR LEWIS: Three of the other categories are environmental engineer, a chemist or a meteorologist.

Wouldn't it be safe to assume that a lot of people that might fit those particular categories would not necessarily be expert on the health effects of air pollution.

MR. DAVENPORT: Well, you know, I guess I'm going to read this as something that's in the Health and Safety Code for the purposes -- you know, I might argue with a chemist who didn't have specialties in this area, okay, just to be clear about it, and a meteorologist, you know, who hadn't worked in this part of the country. You know, something like that I would be concerned about also.

In this case, it's much clearer here that his kind of expertise is, again, is not as a scientist, not as a technician.

SENATOR LEWIS: As I read the Code, it says a physician who has training and experience in the health effects of air pollution; an environmental engineer; a chemist or meteorologist; or a specialist in air pollution control.

It doesn't seem to indicate that their being an

expert in the health effects of air pollution is a necessary requirement of the position.

MR. DAVENPORT: Well, I guess I'm going to stand by my statement.

I think if he was a chemist, and he was an organic chemist, or something, I would be concerned that that might not be the right kind of chemist for this job.

CHAIRMAN LOCKYER: Other commentary?

Does any Member of the Committee very any additional questions they'd wish to pose?

SENATOR HUGHES: I just want to react to, I think it was Senator Ayala who made some criticism about your being disruptive in meetings.

That doesn't persuade me against you. Sometimes you have to be disruptive to change the culture of a group.

The big problem that I have is not your having any experience, except the one that I sort of squeezed out when I read your vita, and I was on another page. But that small experience that you had in that one firm would have helped you in some way.

I'm very sorry that you didn't really capitalize on that experience as you transferred into working with air pollution. It seems to me as though you do a good job of sort of technical things, as a CPA would do, checking off things to make people qualified. And I do understand what CPAs do.

And you're not checking the things that I think that will prolong the life of individuals who function in a particular geographical area, especially in the L.A. Basin.

That's where we've got the most pollution.

And I get really upset when I see the poor areas of my community not supporting you. And I would hope that they would be the ones that could support you, because I think in this position, you could really and truly help these people. Not only to protect their health and the health of their family, but by getting jobs so that they could get better running motor vehicles, so that they could have houses that are pollution free, so that they could have air conditioning and all of the other things that go along with a working community.

So, you just fall short in those particular areas for me. And so, I'm just basing the testimony that I heard from you today, and I regret that I don't feel strong enough about your ability to be able to help the folks that I represent.

Could you give me a convincing argument why you think I should vote for you?

MR. CLUFF: I'm hard-pressed, Senator, to want to border on -- I don't want to argue with people today.

SENATOR HUGHES: You don't have to argue. You have to convince, and that's not an argument.

MR. CLUFF: I appreciate that.

I just want to say I really believe that there are very few physicians, or meteorologists, or chemists that could come before you who would know what BACT is; who would understand what best available technology is, and how to go about controlling pollution.

Those are things that I've made a matter of specialty. Those are things that -- I haven't just studied them

in books. It isn't just that I looked at the policy or the philosophy of how to do it.

I've lived it, day in and day out, with companies who are facing financial crises, who want to comply and don't know how.

SENATOR HUGHES: But you're talking about compliance. I'm not talking about compliance.

MR. CLUFF: But compliance is how you control. It's how we control pollution. Being in compliance is the first component to being able to control pollution.

If we set all the good standards in the world, but we don't know how to comply, then we can't save anybody's life. We'll just have dirty, ugly air, and we'll either have to fine businesses out of the area, or we'll have to live with dirty area.

The work I do brings them into compliance with the standards that we've set. It is what makes the air clean. It's the scrubbers that clean the exhaust. It's the new boilers. It's the research and development techniques. It's the implementation cost to get it in, the timeline that it takes to implement the control policies. It is what makes it work.

And it is not chemistry, I grant you. It's not a physician.

It's my area of specialty, which is helping companies comply with the rules we've set so that we can have cleaner air, so that we can protect our children, so that we can en sure that they'll have a better life.

Somebody has to help them do it. They don't know

how to do it on their own.

CHAIRMAN LOCKYER: Mr. Cluff, are those particular compliance activities still part of your work?

MR. CLUFF: Yes, they are. I continue to work. It becomes a somewhat finer niche now because production issues for the motion picture industry are slightly different, although I continue to get some phone calls. They are primarily in film development labs, the issues of emissions that would come out of soil contaminations on lots.

You probably are aware that a studio lot is like a miniature city. Everything that goes on in any -- and so, in their expansion plans, I deal with them on the traffic control portions, the spray paints booths, the fiberglassing. Those are all issues that I continue to deal with.

Significant day-to-day issues with visible burns, or the perception of visible burn. It's a pyrotechnic effect called smoke effect, those issues.

Also, movies like Volcano -- probably everybody has seen -- or Dante's Peak had significant air quality issues.

CHAIRMAN LOCKYER: You could mess up the streets, Volcano.

MR. CLUFF: Yeah, I did mess up the streets.

CHAIRMAN LOCKYER: I only wanted to say on that that I'm glad you'll still continue to be active. If you're not doing the policy work at the Board level at least continue with these compliance efforts that you have.

MR. CLUFF: Of course I will.

CHAIRMAN LOCKYER: I'm glad that's still part of

your work.

Senator Ayala.

SENATOR AYALA: I was just going to correct Senator Hughes.

I didn't say the man was disruptive. I said members that live in my district claim he was disruptive. And if it's constructive, it's fine. But to be disruptive just for the sake of being disruptive, you know, I think I would like somebody to shoot, as far as I'm concerned.

SENATOR HUGHES: I agree with you on that. Sometimes you have to disrupt to get some action in the right direction.

SENATOR AYALA: I don't know of anyone who is not ready to do that, but to do it for the sake of doing it is wrong in my book.

SENATOR HUGHES: I understand.

CHAIRMAN LOCKYER: Did you want to close with any comment at all? I think we sort of had a lot of time to hear the various points of view.

Mr. Cluff, I need to start with the comment that I found you an impressive person who obviously is bright and amenable. And these confirmation votes are difficult because they're made in a way sort of like a trial. It's not so much just voting on a policy, but you have a person associated with it, and that makes it harder, and it's harder to look somebody in the eye and cast a vote that they don't particularly want to hear.

It's not any secret that my strong inclination

has been to vote against this confirmation. I haven't heard anything that changes my mind.

I was looking for some testimony. When Mr. Hewitt was before us, my comment then is that "I'm concerned that the Governor has displayed this general pattern of making political appointments rather than trying to figure out how they fit the statutory requirements for certain kinds of expertise."

And my complaint is about the appointing authority and that pattern than the individual that they've sent us in this instance.

To the extent that there's a record that persuades me of anything, it's that there's been this pattern of kind of kicking over the table, or upsetting the apple cart where ever you've been that worries me. I think it's devisive.

Now, more than ever, I think we need steady, fair and consistent environmental policies and implementation strategies in California. I'm worried about whether we're going to get that with the current more political mood of the governing board.

So, for that reason, I'm a no vote.

Senator Lewis.

SENATOR LEWIS: I would move confirmation.

CHAIRMAN LOCKYER: We have that motion. It needs no second. If you'll call the roll, please.

SECRETARY WEBB: Senator Ayala.

SENATOR AYALA: No.

SECRETARY WEBB: Ayala No. Senator Brulte.

SENATOR BRULTE: Aye.

SECRETARY WEBB: Brulte Aye. Senator Hughes.

SENATOR HUGHES: No.

SECRETARY WEBB: Hughes No. Senator Lewis.

SENATOR LEWIS: Aye.

SECRETARY WEBB: Lewis Aye. Senator Lockyer.

CHAIRMAN LOCKYER: No.

SECRETARY WEBB: Lockyer No.

It fails two to three.

CHAIRMAN LOCKYER: Thank you, sir.

We need to move the matter to the Floor for their action on it.

SENATOR AYALA: So move.

CHAIRMAN LOCKYER: So, we have that motion.

Is there an objection to send the matter to the Floor for their vote?

What happens is, if it's not acted on by the Floor, there's no final resolution until the year runs out.

SENATOR BRULTE: So he stays on the Board. That's fine with me.

CHAIRMAN LOCKYER: We can record three-two on sending it to the Floor. That may be the easier way.

SENATOR LEWIS: The specific motion is to send it to the Floor?

CHAIRMAN LOCKYER: There will be a motion on the Floor then to confirm him.

SENATOR LEWIS: Better make it three-two.

CHAIRMAN LOCKYER: That will be the order.

[Thereupon. This portion of the

Senate Rules Committee hearing was terminated at approximately 4:20 P.M.]

--ooOoo--

CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 11th day of June, 1997.

Evelyn J. Mizak

EVELYN J. MIZAK
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Legislature

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SACRAMENTO, CALIFORNIA

MONDAY, JUNE16, 1997
2:03 P.M.

SENATE RULES COMMITTEE

STATE OF CALIFORNIA

HEARING

STATE CAPITOL

ROOM 113

SACRAMENTO, CALIFORNIA

MONDAY, JUNE 16, 1997

2:03 P.M.

Reported by

Evelyn J. Mizak
Shorthand Reporter

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MEMBERS PRESENT

SENATOR WILLIAM LOCKYER, Chair

SENATOR JOHN LEWIS, Vice Chair

SENATOR RUBEN AYALA

SENATOR JAMES BRULTE

SENATOR TERESA HUGHES

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NANCY MICHEL, Consultant on Governor's Appointments

FELICE TANENBAUM, Consultant to SENATOR HUGHES

SHANNON HOOD, Consultant to SENATOR BRULTE

ALSO PRESENT

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Environmental Health Hazard Assessment

SENATOR WILLIAM CAMPBELL
California Manufacturers Association

D. WARNER NORTH, Ph.D.

R. LYLE TALBOT
Desert Citizens Against Pollution

JANE WILLIAMS
California Communities Against Toxics

RONALD C. SHANK
University of California, Irvine

STEVE BAKER
California Association of Professional Scientists

KRISTEN HAYNIE
California Association of Professional Scientists

JENNIFER MANN
California Association of Professional Scientists

JAMES N. SEIBER, Director
Center for Environmental Sciences and Engineering
University of Nevada, Reno

GEORGE RAUGH, President
Volunteers for a Healthy Valley

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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN LOCKYER: Mr. Becker, I guess, is our principal matter to be discussed today.

Good afternoon, sir.

DR. BECKER: Good afternoon.

CHAIRMAN LOCKYER: You may want to start with a comment. You're certainly entitled, if you wish.

DR. BECKER: I would love to make an opening statement, if I may.

It's a pleasure, and good afternoon, Mr. Chairman and Senators. I'm Dr. Richard Becker. I'm the Director of the Office of Environmental Health Hazard Assessment. You'll often hear our office referred to by a funny acronym, OEHHA, so please excuse me if I lapse into the acronym OEHHA.

CHAIRMAN LOCKYER: It's sort of a cowboy thing?

DR. BECKER: OEHHA, not he-haw. It takes a while to get the right pronunciation of that acronym, so please bear with me on that.

I will try and be brief, but I also want to try and be comprehensive in my opening statement.

As you all know, I was appointed Director by Governor Wilson last September, just nine months ago. By statute, OEHHA's very unique. It requires that the Director hold the expertise and have a doctoral degree and relevant work experience in a biological or medical science.

I'm sure you all have in front of you my curriculum vita, my resume. I have a bachelor's degree in

chemistry and a doctoral degree in pharmacology and toxicology. I'm a board-certified toxicologist by the American Board of Toxicology, and I have conducted and have extensive hands-on experience in conducting cancer research, toxicity research, and the testing of toxic effects of chemicals.

I'm a member of a number of professional organizations, such as the American Association for Cancer Research, the Society for Toxicology, and the Society for Risk Analysis. I am, consequently, thoroughly and fully qualified to serve as the Director of OEHHA.

I think you also have in front of you, you should, a multitude of letters from the leading scientists in the field of risk assessment and toxicology, endorsing my confirmation as Director of OEHHA.

I would just ask you to note that my confirmation is endorsed by Dr. John Doull, Dr. Joseph Borzelleca, and Dr. Perry Gehring. All of these are past presidents of the Society of Toxicology and are world reknown leaders in toxicology and risk assessment. The Society of Toxicology is the foremost professional organization of toxicologists in the world, and it's comprised of more than 35 hundred practitioners.

My confirmation is endorsed by approximately 40 other scientists from throughout the University of California campuses and from other prestigious California universities, such as Stanford, and from leading scientists from other famous institutions throughout this country and the world. These reknown scientists clearly attest that I'm well qualified and respected in field of toxicology and risk assessment, and they

endorse wholeheartedly my confirmation as Director of OEHHA.

The mission of OEHHA is to protect public health and the environment by using the most up-to-date scientific data and methods to conduct thorough and objective evaluations of health hazards posed by chemicals. We don't do laboratory studies. We review the studies conducted that are by others and make health risk assessments.

Our office, the Office of Environmental Health Hazard Assessment, was established as a free standing organization when the Governor created Cal-EPA in 1991. Our office was established as a free standing organization to ensure first and foremost that the health effects of chemicals released in the environment are given top priority. And OEHHA was placed on an equal stature with the other boards and departments within Cal-EPA regulatory programs. This was to make sure that the health effects, or the potential health effects of environmental chemicals were adequately considered by all the regulatory boards and departments.

This has transpired and will continue to be enhanced under my directorship.

Under my leadership, we are improving through greater collaboration and peer involvement in scientific studies, through the open exchange of scientific data, and through rigorous internal peer review and external, independent, scientific peer review.

There's a common theme in the values that I've put forward in my leadership as Director, namely, the need for open public processes to foster input from all stakeholders, and

to foster dialogue and exchange of ideas and scientific knowledge.

Mr. Chairman, Senators, for me this is a very exciting and challenging time to lead the Agency's department devoted to risk assessment. Many of the dogmatic approaches dating back to early 1970s are being called into question by new scientific findings. We all know that science is not a static discipline. New research is published each and every day. It's our challenge for us to be sure that we understand this new research, and that we can use the latest scientific findings in our work.

It's also difficult for us, because risk assessment is an evolving discipline, and we must recognize that and encourage the use of the latest scientific information.

We have just completed, or it has just been completed as a result of statutorily mandated review of the policies, practices, and procedures of risk assessment, a report by the Risk Assessment Advisory Committee, which I would like to speak to shortly. This committee has made more than 140 recommendations for my office and those other organizations within Cal-EPA to improve how we do risk assessment and environmental health evaluations of chemicals in this state.

We do very little regulation within OEHHA. We are primarily a scientific organization. Our health assessments that we prepare are used by other state and local programs, and serve as an important component in their actions to set regulatory levels to protect public health.

We, OEHHA, are the environmental leaders of the

nation in many areas of risk assessment. Our work reverberates across America and stimulates change throughout the entire world.

We must base our work on science, not on fad, not on fear, nor on any personal or political agenda. We must use the right science and get the science right.

In our health assessments, we need to look at the whole picture and integrate exposures across all pathways and all environmental media, not just looking at air, not just looking at water, not just looking at soil, but integrated. That's not only good science; it's comprehensive and complete science, and it makes good, common, reasonable sense.

Now, as we develop these new risk assessment techniques, we must make sure that they're useful to and used by the risk managers, those folks who are making the decisions to reduce risks and protect human health and the environment. We have to work closely with the risk managers within other Cal-EPA boards and departments, and to ensure that these approaches are translated into measurable improvements in the public health.

While some critics have charged that we haven't done enough, well, I disagree. I think the track record of OEHHA under my leadership in the last nine months proves them wrong. We have accomplished a great deal in the last nine months. This reflects my commitment to completing our work in a timely manner in order to ensure the protection of health of all Californians.

If I may, I have a hand-out now for the Senators. These are the accomplishments of OEHHA since

September of 1996, and I'd briefly like to go through these, Mr. Chairman and Senators.

I think it's quite a track record, and if you'll bear with me. First and foremost, I mentioned implementation of the recommendations of the Risk Assessment Advisory Committee. Later on today, we will hear testimony from the participants of the Risk Assessment Advisory Committee, so I'll make my statement very short.

OEHHA was charged by the Governor to lead Cal-EPA's efforts across all departments to implement the recommendations of the Risk Assessment Advisory Committee into strategic plans to ensure the highest standard of risk assessment and health evaluations are carried forward in all of California's environmental protection programs.

In implementing the recommendations of the Risk Assessment Advisory Committee, we have incorporated plans into OEHHA's strategic plan. We have formed an inter-agency risk assessment coordinating work group. We have developed an MOU with U.S. EPA to increase harmonization and exchange of scientific analysis.

We have under way a pilot project to develop risk assessments using new cancer guidelines, new information, new scientific approaches.

We have initiated a Memorandum of Understanding with the Department of Health Services to obtain needed epidemiological support for our organization, and we have started a program and just concluded last week a very successful training effort to train risk managers across the state in the

principles and applications of risk assessment so that they know what risk assessment is and can use that tool in protecting public health and the environment.

CHAIRMAN LOCKYER: Who would participate in that kind of training?

DR. BECKER: This is open, Senator. It's for all Cal-EPA boards and departments. It's open to public agencies throughout. It's a free course that we offer, and we offer it in conjunction with and work closely with U.S. EPA Region Nine in this program. There are two courses currently offered: risk assessment and risk communication.

With respect to air toxics health risk assessment, and again, I'll remind you, these are accomplishments just in the last nine months. We have released a state-of-the-art risk assessment guidelines for the assessment of air toxics using a tiered approach, starting with the screening analysis, and including new scientific approaches, which include probability analysis, which is one of the recommendations of the Risk Assessment Advisory Committee.

We have developed and released, for public review and comment and scientific review, guidelines on cancer potencies for 120 chemicals. We have guidelines for systemic toxicants which are draft, undergoing internal scientific review, for 118 chemicals. This is a good track record.

With respect to specific chemical risk assessments, the health -- we completed the health effects assessment of lead in September of '96. In December of '96, we completed developmental and reproductive toxic health effects

assessment for arsenic and cadmium.

We recently released a health effects assessment for environmental tobacco smoke, and we recently released a health effects assessment for diesal exhaust. A public workshop and scientific workshop will be held on that on July 1st, in cooperation with the Air Resources Board.

With respect to Proposition 65, there will be a separate hand-out, but I'd like to just cover a couple of things briefly here.

We have developed a prioritization procedure to work on the chemicals that pose the highest hazard and pose the highest exposure first. We have just released that as a result of a two-year process which involved many, many comments and many workshops and a variety of stakeholders. We have prioritized 13 potential developmental and reproductive toxicants, and 33 potential carcinogens, for which we held workshops in November.

Importantly, we have issued regulations which clarify the Notice of Violation requirements for Prop. 65, and we have just completed, for draft, hazard indication documents for Proposition 65 Scientific Advisory Board review, and these are undergoing currently internal scientific peer review.

Now, one other important aspect that we have worked on that's very important to note is pro-active planning and priority setting. We have completed just recently OEHHA's first strategic plan. And, importantly, we have instituted a program of emerging environmental challenges. We have scheduled a workshop to occur in conjunction with UCLA this

coming November in an attempt to identify those issues which are down the road a bit -- two, three, five years -- which may face challenges for all of Cal-EPA.

Mr. Chairman, Senators, this is a good track record, and this is the track record of my performance as Director of OEHHA.

In all that we do, we strive for transparency in our processes and decisions, consistency in our core assumptions and science practices, and common sense and reasonableness in our actions.

It is entirely appropriate to err on the side of protection of public health and the environment in the face of scientific uncertainty, but we must use common sense and reasonableness in the application of our assumptions and our methods to ensure unrealistic overestimates or unrealistic underestimates of risk [sic].

As Director of OEHHA, I am committed to champion open processes in the pursuit of the most up-to-date science.

Mr. Chairman, I'm a man of action, a man of conviction, and a man of integrity. I will not compromise science, despite those who want to do things the old way. The attitude of, "just give me a bright line" or "a single number" may be easier, but it's not state-of-the-art science, risk assessment or risk assessment [sic].

Now, upon assuming leadership -- and I will be brief, Mr. Chairman -- upon assuming leadership and directorship of OEHHA, I faced many challenges. We had a problem with a flawed records retention policy that was developed under the

previous director.

Mr. Senator, Chairmans [sic], when faced with this challenge, when this responsibility for administrative matters fell under my authority and duties as Director of OEHHA, I took prompt and, I think, appropriate action.

What action did I take? Well, within six days of my appointment -- yes, within six days of my appointment as Director -- I had my staff check with each section chief to ensure that no implementation had occurred. And my staff received assurances from the section chiefs that, indeed, no implementation of that flawed records retention policy had occurred.

We then directed each OEHHA section chief not to implement that policy. That occurred within six days of my appointment as Director.

I then personally reviewed the policy and the concerns expressed, and I personally notified all staff within OEHHA to take no action, and I rescinded the policy of the previous director.

Mr. Chairman, Senators, in my statements and letters written at that time, I relied upon the ascertainment of my staff that the policy had not been implemented. Later, upon learning that one staff person had discarded materials, I instructed my staff to review the matter fully, to document all actions, and then we communicated this to set the record straight.

But, Mr. Chairman, Senators, I didn't stop there. I directed that a new policy be developed. I insisted that we

place into concrete, into the core of that new policy, a fundamental principle of the scientific method, that when an author or a scientist deems his or her work completed, even if it's a draft, it's to be designated as a record to be retained.

If it will please, hand out the new policy.

Mr. Chairman, Senators, my actions are clear. I rescinded, revoked, and got rid of the flawed policy, and I implemented a new policy.

I also directed that before being finalized, the new draft records management policy undergo extensive internal review by each OEHHA staff scientist, and also undergo review by internal and external legal and regulatory experts. I also demanded that it undergo thorough public review.

These are the actions that I took as Director of OEHHA to meet these challenges. The policy you have before you is a policy that I, as the Director of OEHHA, developed. And again, I will remind you that at the core of that policy is a fundamental principle of the scientific method, that whenever an author deems his or her work completed, even if it's a draft, it's designated as a record to be retained. I insisted that be the core of a new policy developed under my directorship.

My actions in this regard exemplified good science and good public policy.

One other issue I'd like to address, Mr. Chairman, if I may, Senators, there have been, I think, unfounded charges of management interference with staff scientists. I wholeheartedly reject such accusations.

Scientific peer reviewed is what occurs within

our organization, just like any other scientific organization. This is not management interference. Peer review, scientific peer review, is a fundamental principle of the scientific method.

Within our organization, the Deputy Director for Scientific Affairs is charged with conducting the internal scientific peer review of OEHHA scientists' work. The Deputy Director of Scientific Affairs is also responsible for facilitating external independent scientific peer review.

What's the purpose of scientific peer review? The purpose is to ensure that our work products, our health risk assessments, are of the highest scientific quality. Peer review is a sound and usual and customary practice in all scientific organizations.

I shall not be faulted for adhering to the highest quality science that Californians deserve, that Californians expect, and that California taxpayers pay for. We will not conduct studies that cannot yield scientifically meaningful results.

It's important to remember that the Deputy Director for Scientific Affairs and the Director of OEHHA are not run-of-the-mill administrative managers. We are both highly qualified and skilled scientists with extensive experience in chemistry, toxicology, pharmacology, mutagenesis, histopathology, and risk assessment. We are the highest, most qualified scientists in our organization.

In conducting and directing scientific peer review of staff scientists' work, we're doing what is expected

of any and all reputable scientific organizations.

Mr. Chairman, Senators, OEHHA doesn't make the environmental regulatory decisions, but our scientific health evaluations serve as the foundation for wise decision-making by other boards and departments and by local government agencies. We have an absolute obligation to be completely objective and to make sure that those making the risk management decisions, and those affected by the decisions that are made, are fully informed and understand all of the strengths, all of the limitations, all of the assumptions, and all of the scientific certainties and uncertainties of our health assessments.

Mr. Chairman, Senators, my vision of OEHHA is clear. The actions I have taken reflect that vision. We are an organization, a small organization, but we're charged with an extremely important mission: to identify the hazards chemicals pose to human health and the environment.

There should be no doubt in anyone's mind of my commitment as the Director of OEHHA to the completely thorough and completely objective scientific analysis of health effects of chemicals and, importantly, to the use of fair and open processes.

Mr. Chairman, Senators, I care deeply about the environment and the environmental health of all Californians. We have all had family members or friends afflicted by cancer or other diseases. I myself have lost loved ones to cancer and heart disease. My own son was born with a birth defect which necessitated heart surgery at Stanford when he was just sixteen months old.

I have dedicated my entire career to identifying the toxic effects environmental chemicals can cause. My work has been devoted to alleviating the human pain and suffering that can be caused by the unsafe use of chemicals.

I am intensely committed personally and professionally to use my training, knowledge and expertise to lead OEHHA as its Director in protecting the public health and environment in California for all Californians.

Mr. Chairman, Senators, I thank you for consideration of my appointment as Director. I am pleased to answer any questions that you may have.

Thank you for your patience.

CHAIRMAN LOCKYER: Thank you, Mr. Becker.

I think there are people who would like to testify that have time constraints, so I want to make sure to ask anyone in that category. I think I start with Senator Campbell, if he wants to come forward, as one of the supporters.

Are there other on the support side that have a time problem?

DR. BECKER: Mr. Chairman, I do have one witness who does have a time problem as well.

SENATOR CAMPBELL: Mr. Chairman, Members, good afternoon.

CHAIRMAN LOCKYER: Good afternoon. Good to see you.

SENATOR CAMPBELL: It's a pleasure to be here, a pleasure to be anywhere. I'm delighted to join with you this

afternoon.

CHAIRMAN LOCKYER: Are you sure you want to get into this controversy about chemicals in the workplace and environment?

SENATOR CAMPBELL: No, I just want to support Dr. Becker, that's all.

I am delighted to be here. And to let those of you who are maybe experiencing a loss of hair, to know that it does come back. I have a call in to Dennis Rodman to select a color, or two or three.

[Laughter.]

SENATOR CAMPBELL: Mr. Chairman, Members, once again I thank you for the opportunity to be here today, and I'm here to express the California Manufacturers Association's support for Dr. Becker's confirmation as Director of the Office of Environmental Health Hazard Assessment, or as he said, OEHHA.

As an initial indicator of his qualifications, one need only look at his support letters from many of the leading scientists throughout the country. However, his actual work at OEHHA provides for a clearer picture regarding his qualifications. During his brief tenure, Dr. Becker has proven his leadership at OEHHA by, among other things, leading California's efforts in implementing the recommendations of the Risk Assessment Advisory Committee.

Scientific inquiry depends upon an open interchange of information, and Dr. Becker has improved the science by outreach and open processes to be sure that all relevant data scientific studies are obtained.

Under his leadership, OEHHA has provided for greater internal and external peer review so that there is a complete and objective picture of the potential hazards posed by chemicals. This is a process that is time consuming but vitally important in providing for the advancement of scientific methods which will increase our knowledge of how exposure to substances affects human health and environment.

Dr. Becker has not rushed to judgment in listing chemical or releasing incomplete risk assessments. Whenever the impact is felt -- whether the impact is felt at the individual level over health concerns, or at the manufacturing level over compliance cost, accurate risk assessments lay the groundwork for responsible regulatory actions.

Because California maintains such high standards for the protection of human health and environment, greater care is required in making these decisions.

Mr. Chairman and Members, CMA is not endorsing Dr. Becker because he leans toward one side or the other. In fact, our membership, as often as not, disagrees many times with the results of OEHHA. We are endorsing him because he insists on objectivity at all times. He demands good science, thoroughness, and fair and open process, and we believe he will serve California well.

Thank you very much.

CHAIRMAN LOCKYER: Thank you, Senator.

The next gentleman who has a time constraint.

DR. BECKER: May I introduce Dr. Warner North.

DR. NORTH: Thank you very much, Mr. Chairman,

Senators, especially for letting me come on first so that I can be sure that I attend my son's graduation this evening.

I'm Warner North. I'm a Senior Vice President of Decision Focus, Incorporated, a 150-person firm in Mountainview, California that does consulting and contract research in risk and decision analysis.

I am also a consulting professor in the Department of Engineering Economic Systems and Operations Research at Stanford University, where I teach courses on government policy relating to energy and environmental risk.

Today, I am testifying as an individual, not on behalf of Decision Focus, Incorporated, any of its clients, Stanford University, or any other organization with which I am or have been associated.

For more than 20 years, I have been active in the field of risk analysis, including contract research and consulting through Decision Focus, teaching at Stanford University, service on committees of the Science Advisory Board of the Environmental Protection Agency, and service as an unpaid member of boards and committees of the National Research Council of the National Academy of Sciences.

I am co-author of numerous National Research Council reports on health risk assessment and its use in supporting regulatory decisions on toxic substances, including all three of those referenced in the executive summary of the October 1996 report of the Risk Assessment Advisory Committee, "A Review of California Environmental Protection Agency's Risk Assessment Practices, Policies and Guidelines."

These three National Research Council reports on which I worked are: "Risk Assessment in the Federal Government, Managing the Process," 1983, "Science and Judgment and Risk Assessment," 1994, and "Understanding Risk and Forming Decisions in a Democratic Society," 1996.

I have been active over the past two decades in the Society for Risk Analysis, an international professional society with over 2,000 members. I served as the elected President for this professional society in 1991-92.

From 1987 to 1989, I served on the Governor's Scientific Advisory Panel for Proposition 65. From 1989 to 1994, I held a Presidential appointment to the Nuclear Waste Technical Review Board, an independent federal agency with oversight responsibility for the Department of Energy's program to develop a repository for high level nuclear waste.

I came to know Dr. Richard A. Becker through his participation in the Cal-EPA staff support for the report of the Risk Assessment Advisory Committee. Dr. Becker and I have appeared at several professional conferences together, where he has very effectively presented the findings and conclusions of this report to scientific audiences.

I am highly impressed with his knowledge and scientific background in risk assessment, and with his leadership in promoting the changes in Cal-EPA risk assessment practices as recommended in the Risk Assessment Advisory Committee's report.

Over the past decade, there have been substantial advances, both in the scientific methods used in risk

assessment, and in the methods for characterizing risk so that risk assessment can be more effectively used in support of risk management by federal and state regulatory agencies.

The Cal-EPA Risk Assessment Advisory Committee report, the three National Academy of Sciences reports that I participated in writing, and the 1997 report of the Presidential-Congress Risk Assessment and Risk Management Commission all stress the need for disclosure of uncertainty in risk estimates and the need for addressing risk issues in proper context.

For example, multiple pathways and multiple media -- that is, air, water, food and soil -- may need to be considered both in the interpretation of the scientific data underlying risk assessments and in the use of mathematical models in producing risk estimates.

It is important to consider both uncertainties and risk estimates and the variation in risk that may result from differences in susceptibility to toxic agents. For example, differences in age, sex, or genetic inheritance, and also from differences in exposure resulting not only from location, but also from behavior and lifestyle patterns.

Is also important to avoid having risk assessment become an overly complex and time consuming process, and to assure that risk assessments address the issues believed to be the most important by interested and affected parties among the public.

Therefore, risk assessment must be a process that is appropriately tailored to the risk management need, rather

than a one-size-fits-all standard methodology to be applied uniformly to all toxic substances.

I believe that Dr. Becker's understanding of these subtle and complex scientific issues makes him outstandingly well qualified to serve as the Director of the Office of Environmental Health Hazard Assessment at Cal-EPA.

Furthermore it is my understanding that he has been a strong and effective manager, accomplishing needed balance between assuring high quality for OEHHA's work products and getting these work products completed in timely fashion. He has attempted to establish sound priorities in responding to the many demands placed on OEHHA, and to assure a fair and open public process such that the Agency's work products are both based on good science and responsive to the concerns of stakeholder groups among the public.

In my judgment, Dr. Becker has been doing an excellent job since he was appointed Director last September. I urge that Dr. Becker be confirmed so that he may continue to serve in this position for the benefit of the citizens of California.

Thank you.

CHAIRMAN LOCKYER: Thank you very much.

Are there questions of the witness at all? Thank you, sir. I appreciate you being with us.

Is there anyone else present, either pro or con, who has a time constraint that would wish to testify at this time?

MR. TALBOT: I'm grassroots from the Lancaster

area.

CHAIRMAN LOCKYER: Tell us your name.

MR. TALBOT: My name is Lyle Talbot. I represent Desert Citizens Against Pollution.

We are opposed to this appointment. OEHHA -- I have a hard time with that myself -- has a long history of ignoring public concerns brought to it, brought in by affected citizens. For example, National Cement, the only pay-to-burn toxic incinerator, is near Gorman in my community.

Back in the '80s, some down-winders were at a local beauty salon and shared like stories of recent and frequent headaches and metallic taste in their mouths. Dr. Holtzer from this office made a visit to the area at that time and chatted with some local doctors, and promptly dismissed the whole matter.

I'd like to report to you now that National Cement has never gotten its federal permit to burn hazardous waste, and they will stop accepting hazardous waste to burn at that facility on November 11th of this year. That's Armistice Day to you old timers; I think they call it Veterans' Day now. So, we'll celebrate on Armistice when they throw in the towel.

When we're talking about our family's health, we don't care if the appointee is a Democrat or a Republican, only that he or she is competent.

This office has conveniently forgotten Rosemond cancer cluster, among others. Our communities have a right to know, and we need a watch dog in this position, not an attack dog attacking that right to know.

Book burning, well, we've already seen enough book burning and paper shredding in this century, so please deny this appointment. Thank you very much.

CHAIRMAN LOCKYER: Thank you, sir.

Is there anyone else that has a time problem?

DR. BECKER: Mr. Senator, may I respond just quickly?

CHAIRMAN LOCKYER: I don't think you need to with each person. Just do it as a summation.

DR. BECKER: Thank you.

MS. WILLIAMS: Hi, I'm Jane Williams with California Communities Against Toxics.

Good afternoon, Members of the Committee. Senator Lockyer, it's good to see you all again.

As you know, I represent community groups across the State of California. Our organization was started in 1989 in response to numerous proposals to site garbage incinerators and toxic incinerators throughout California. Subsequent to the formation of our organization, none of those were sited.

We have long been concerned about health risk assessments in California, and the way in which it is performed and the agencies which perform it.

The Office of Environmental Health Hazard Assessment is the agency that stands between us and pollutors. It is the agency that has the scientific backbone and has the scientific resources to assess risk.

And I want to tell you from my own personal experience of looking at many health risk assessments over the

last five years, that it is a pattern that health risk assessments do not assess risk. They do not take a look at multi-pathway exposure assessments.

And to give a case example, the IES incinerator, which is an existing medical waste incinerator in Oakland, is currently the only regional medical waste incinerator operating in the State of California, burns 2,000 pounds an hour of medical waste. Of course, in a community of color, in Oakland.

The health risk assessment never looked at the impacts of dioxin and mercury contamination to the fish in the Bay. San Francisco Bay is very contaminated. The fish, of course, are eaten by Laotians, Asians, communities of color. And quite frankly, that is a pattern.

The rising incidence of cancer, I just received a newsletter from Dr. Peter Montague talking about the numerous studies that have shown that environmental factors are far more important than genetic or inherited factors in cancer. Cancer rates differ from country to country, but when people migrate from one country to another, within a generation or two, their cancer rates have changed from those of their original country.

This indicates to us that environmental factors are an overlooked part of what used to be called the cancer epidemic, but what is being called now as the cancer holocaust. One in three Americans will contract cancer by the year 2000. Many of those will die from it. It is an increasingly significant part of our gross national product. The health care industry is now 15 percent and rising.

We were very alarmed to see the document

retention policy, especially the wording of this policy, that the policy was enacted to, quote, "Protect the public from confusion and possible harm."

We, the communities that are on the front lines of toxic exposures, believe that we need to be protected from the possible harm from polluters, not from a document retention policy.

I heard Dr. Becker talk about challenges down the road. From being involved, along with my colleague Gina Soloman, in the Ed. Stat. Process, which is the process to identify testing and screening protocols for endocrine disrupting chemicals, it is clear to us from working with our colleagues nationwide that California has lost its preeminent position as a protector of environmental health and public health from toxic chemicals. And we would like to see us retake that position. We would like see the Office of Environmental Health Hazard Assessment step up to the known threats, not the theoretical threats that are affecting us in our communities, but to the known threats.

In order to do this, we don't think that Dr. Becker should be confirmed, and we thank you for your time.

CHAIRMAN LOCKYER: Thank you.

Unless there's anyone else that has a time problem, we'll just drop back to support commentary, if there's others who want to say something on the support side of the matter.

DR. BECKER: There are others, Mr. Senator, but I think I would like to respond, if I may, Mr. Chairman, just very

briefly.

CHAIRMAN LOCKYER: Dr. Becker, I asked you to wait for summation. Let's do that, please. I want to get all the testimony before us as soon as I can.

Anyone else that wishes to comment, either support or opposition?

DR. BECKER: Professor Shank, please.

DR. SHANK: Mr. Chairman, Senators, my name Ronald Shank. I'm a Professor of Community and Environmental Medicine and Director of the Environmental Toxicology Program at the University of California, Irvine.

I've been a basic research toxicologist for 30 years, and I would like to review for you the credentials for Dr. Becker.

He is one of the best trained and qualified scientists in regulatory position in the United States. He is a basic research scientist's scientist. He has been formally trained and is a basic research scientist in pharmacology and toxicology, experimental cancer pathology, and went on as a National Cancer Institute fellow to the WHO international agency for research on cancer in Lyons, France, where he worked for two years under the top two people in that agency, doing basic research in chemical carcinogenesis. That is the study of how and why chemicals cause cancer. And he's had practical toxicology experimental experience as well.

I mention this because this is extremely important in the position of Director of such an office that he holds now, because the Director in that position has to

understand what is meant by good science and science that is not so good. One has to be able to discern between scientific data that have high credibility and scientific data that do not have such high credibility. And Dr. Becker does that outstandingly well because he is so well-trained and so objective. He doesn't compromise on scientific integrity.

I'd also like to point out that his international respect among his peers in risk assessment is outstanding. I've had a chance to see him explain to a wide variety of audiences outside the United States, and gain the respect of people from Europe and from Asia on more than one occasion. And they will come back to him and ask him for his opinion, for his analysis.

This brings a lot of respect to California, and it makes me very proud when I go around different parts of the world, and I get compliments on the scientific credentials of this new Director. It has helped, and California does have a preeminent position worldwide in this area. We can all be proud of that.

And Dr. Becker will do everything he can to maintain that, I'm sure.

I won't take any more of your time.

CHAIRMAN LOCKYER: Let me ask you, sir, if you've had an opportunity to review any of the critical documents from people involved in the Lompoc study and other such matters? That is, those who are critical of the work environment and product of Dr. Becker's department?

DR. SHANK: No, I have not reviewed any of those documents.

CHAIRMAN LOCKYER: This is mostly based on your own personal observations in the scientific panels and so on?

DR. SHANK: Yes, and his reputation.

CHAIRMAN LOCKYER: Thank you very much, sir.

MR. BAKER: Mr. Chairman, Members, Steve Baker with Aaron Read and Associates representing the California Association of Professional Scientists who are strongly opposed to the confirmation of Dr. Becker.

I want to make some very general remarks, and then following my general remarks, I have two people that can be more specific, including a former employee of OEHHA.

CAPS represents the scientists that work at OEHHA. And CAPS is very serious and has never taken a position on one of the Governor's appointees. This is the first time that CAPS, our group of scientists, has ever opposed one of the Governor's appointees to anything, so that this is a fairly significant action on their part.

The reason for their opposition is, the scientists that work for the Department, the experts in their field worldwide, feel very strongly that Dr. Becker has used political considerations instead of scientific considerations.

We've gotten petitions signed by 20 or 30 of the Ph.D.s in the department, expressing in very strong terms their objections to Dr. Becker.

CHAIRMAN LOCKYER: Are those public records?

MR. BAKER: These are employees from the department that are, you know, concerned with their employment. We'd be happy to get you, Senator, a copy of the petition.

CHAIRMAN LOCKYER: Who did they petition?

MR. BAKER: They petitioned us, the California Association of Professional Scientists to oppose on their behalf.

CHAIRMAN LOCKYER: But not ones they communicated they some departmental superior?

MR. BAKER: Correct.

In addition, a bunch of these individuals have attended CAPS meetings on their own time. They've traveled; they've come to express their, again, their strong feelings in opposition to Dr. Becker.

SENATOR LEWIS: Question. Sorry to interrupt you. Just a question of fact.

How many Ph.D.s did you say signed this particular petition?

MR. BAKER: I saw a petition that had 20 or so of about the 55 employees in the department signed a petition in opposition. And I attended a meeting that there were another 15 or 20 employees that showed up in person on their own time on a Saturday. And for a group of scientists, that's an unusual outpouring, one way or the other, at least in my experience.

Let me just take a minute to mention one document you've heard a little bit about, the records retention policy. I'm looking at a June 20th memo from Richard Becker to three of the section chiefs regarding the record retention policy. This memo's been referred to by the scientists at OEHHA as the Nazi memo. You can draw your own conclusions on why they feel that way.

It's a memo that asks the section chiefs to prepare and implementation plan. It says, "I will expect to see a satisfactory draft from each of the above sections in my office by the close of business, Wednesday, June 26th."

It goes on to say, "I trust my intent is completely clear on this matter. It is very important that you as section chiefs develop a plan to include a list of specifications, appropriate staff time and resources to ensure timely compliance with the records retention policy."

This comes from Mr. Becker, who just told the Committee that on his sixth day as the Director, he had a plan to rescind the records retention policy. We've heard in the past that Mr. Becker has tried to distance himself from the records retention policy.

Again, I think that the June 20th memo speaks for itself as far as Dr. Becker's involvement with the records retention policy.

I have with me Ms. Kristen Haynie from CAPS.

CHAIRMAN LOCKYER: Is there more comment on the records retention policy? We'll listen to that first.

MR. BAKER: And Jennifer Mann, a former employee of the Department, that can get into more detail on these issues.

MS. HAYNIE: Thank you, Senator. My name is Kristen Haynie. I've been representing the scientists for eight years. I represent the California Association of Professional Scientists. There are 57 members of CAPS at OEHHA.

To clarify your further question about the support of CAPS's action, even though 20 to 30 scientists signed

a statement, many of them were still afraid to even sign the statement going to CAPS, so I've talked to many people on the telephone and it's an overwhelming response.

Regarding the records retention policy, the scientists were told in April, 1996, to start devising a plan to implement the policy as directed by the department.

Getting to your question and your point about Dr. Becker's role in this --

CHAIRMAN LOCKYER: I notice the dates. He's the Deputy Director for Science in EPA, and that's where the memo, or the order, or the policy comes from.

DR. BECKER: No, sir. The policy was issued by the Chief Deputy Director, Charles Shulock.

CHAIRMAN LOCKYER: That's what I'm saying.

DR. BECKER: Not by me.

CHAIRMAN LOCKYER: No, I read the names.

So this is, "It was my superiors ordered me to do it," defense. Is that what we're hearing?

DR. BECKER: Sir, I would just add --

CHAIRMAN LOCKYER: Your memo, June 20, you're the Deputy Director.

DR. BECKER: Correct.

CHAIRMAN LOCKYER: The policy comes down in April from the boss, somebody's boss, but at least the Chief Deputy; is that right?

DR. BECKER: That's correct.

CHAIRMAN LOCKYER: In June, you send the E-mail -- I guess it's E-mail -- to your subordinates,

expecting some implementation plan.

DR. BECKER: Let me place that into context, since you've raised the question.

At that time, in June, we were developing -- each section was developing their annual work plan, which include budgeting for all of their activities, including administrative activities, non-administrative activities such as development of the health assessments for lead, or the health assessments for diesal, the health effects assessments for Proposition 65.

As part of the budgeting process, of course, you budget time and resources that you have.

CHAIRMAN LOCKYER: Was that your principal responsibility as Deputy Director? What was your assignment? Was it budgeting and that sort of thing?

DR. BECKER: No, but part of it was to make sure that the annual work plans included all potential, if you would, activities, administrative and non-administrative.

What you've taken out of context -- or what's been taken out of context here is simply the Director to include this into the draft, if you would, annual work plan. The process is to develop a draft annual work plan --

CHAIRMAN LOCKYER: Is that your responsibility?

DR. BECKER: It is the responsibility for the section chiefs to develop their annual work plans for each one of their sections.

CHAIRMAN LOCKYER: What was yours as Deputy Director?

DR. BECKER: My responsibility as Deputy was to

make sure that they do develop those work plans. And then as those work plans are developed, typically what happens, and this happens in every organization that I have ever worked for, is that you find out that you have budgeted, if you would, for more -- or you've spent more than you can -- resources than you have. Then you have to adjust those.

That's why the process is iterative. You develop a draft plan. The draft plan is then reviewed. It's reviewed by the section chiefs. It's reviewed by the deputy directors, by the Chief Deputy, and ultimately by the Director, and then finally approved and implemented.

So, my job at that point was to ensure that the section chiefs were developing their draft annual work plans, yes.

CHAIRMAN LOCKYER: We asked to be provided with whatever internal documents there may be during this entire period of your being Deputy Director. We don't have any other memos of this sort; that is, that ask for other submissions.

Are we just missing them or something, or were there not other directives to the office chiefs?

DR. BECKER: I would have to check on that, Senator. I'm sure that there were other information that was given out in terms of development of work plan related issues.

We identified priority action items for each section to be included in their work plan. I'm aware of that memo. That memo was somewhere around the same time. So, for each section, there were certain program priorities that were identified.

I would say, Mr. Chairman and Senators, that with respect to this matter and the rescinded -- the policy that I rescinded, it is still a matter of litigation. So, it may be that some of these materials are not available at this time because of some litigation issue, and I'm sure you will respect that.

I would be glad to consult with counsel and see if there's any additional information that we can provide you with.

CHAIRMAN LOCKYER: So, six days after the memo that's been talked about asking for timely submission of compliance with the shredder rule, you E-mail to section chiefs saying, "Do not use the word destruction in your memos."

Do you have that one with you?

DR. BECKER: I don't have that one with me.

CHAIRMAN LOCKYER: It wasn't submitted to us, even though we formally discovered them all. It's been hidden from us. Now, I happen to know it exists, but do you remember sending that.

DR. BECKER: I don't. I don't recall that at all.

But we must understand, Senator, that there are ways to handle records other than destroying those. Those are archiving those, et cetera, et cetera, et cetera, in terms of good record management programs.

I don't have that in front of me.

CHAIRMAN LOCKYER: Well, it says, "Do not use the word destruction." It doesn't say "don't destroy." There is

kind of a difference, but maybe one that's not obvious to a scientist.

SENATOR BRULTE: Senator, do all the Committee Members have a copy of that?

CHAIRMAN LOCKYER: No, because we don't have it. It's been hidden from us. All we know is someone's memory that this memo or E-mail was sent on June 26.

SENATOR BRULTE: Could we have that person whose memory it is come before the Committee and testify?

CHAIRMAN LOCKYER: I'll ask if they're available as soon as we complete this.

DR. BECKER: I would be glad, Mr. Chairman and Senators, and we hope to resolve this matter, the legal matter very shortly. Be happy to share as much information as we can at that time.

CHAIRMAN LOCKYER: I certainly hope you resolve it before early September, because that's when your year runs.

With respect to the dates, we'll hear more about this, but so that we're not confused about them, you are appointed in early September. The lawsuit is filed October 1st. At two minutes to 5:00 on that day, you send an E-mail to your section chiefs saying, "Put on hold the record destruction rule."

So, first of all, it's not six days as you had indicated earlier, and it's subsequent to the lawsuit being filed by NRDC.

DR. BECKER: Senator, I would point out that on September 9th, the Chief Deputy Director, as I indicated to my

staff, sent a note to all section chiefs telling them not to go ahead and implement the policy. I believe that's part of the public record. That was September 9th. That was six days after my appointment.

And on October 1st, I did send a note to all staff telling them. So, that is correct.

CHAIRMAN LOCKYER: Is it now Mr. Shulock, that's your Chief Deputy, is that who we're talking about on September 9?

DR. BECKER: Yes, Mr. Shulock was the Chief Deputy on September 9th; that's correct.

CHAIRMAN LOCKYER: So, he was the boss that we talked about earlier that the memo came from; wasn't he?

DR. BECKER: At that time in April --

CHAIRMAN LOCKYER: The April memo.

DR. BECKER: He was Chief Deputy. When I assumed directorship, he continued on as Chief Deputy. Yes, that is correct.

After discussing the matter with him after my appointment on September 3rd, September 4th, and discussing the matter with him, I asked that he, as I explained in my opening remarks, make sure that implementation had not occurred, checked with each one of the section chiefs, and hold in abeyance implementation, if you would, of that policy.

CHAIRMAN LOCKYER: In reading your memo, or his memo, which I guess in this instance you authorized, unlike the original one that you were implementing from him, it looks to me like your constraining factor is budget. It says, "Don't begin

this work until we've compiled the department-wide key Y allocations."

DR. BECKER: I was very, very concerned about the budget at that time. There's no doubt about that. That was another issue that I was just informed about in terms of a problem in aligning our revenues with expenditures at that time. Yes, Senator.

CHAIRMAN LOCKYER: Okay.

SENATOR AYALA: On the same thing.

Yes, Dr. Becker, my questions are not in the area of qualifications or credits. I think you're fully qualified.

DR. BECKER: Thank you, Senator.

SENATOR AYALA: The discussion you had with the Chairman bothers me a little bit.

You told me in my office that you were not responsible for the shredding of documents. They shouldn't have been destroyed. You were following orders from the Director.

And the letter that Chairman read of June 20th, you were still the Deputy Director, and still supporting the policy of records retention policy; correct?

DR. BECKER: No issues had surfaced at that time. No issues to my mind had surfaced at that time.

What we were trying to do, as I explained, Senator Ayala, was to budget all of our activities for the next fiscal year, which would include all administrative activities.

One other area that I would mention, Senator, with respect to that issue, is that my concern with respect to that policy had to do with my role. It was not my -- under my

jurisdiction, if you would, these administrative policies. I don't know how to state it more clearly than that at that time.

SENATOR AYALA: I understand. You were not the general. You were the colonel. You were just implementing policies directed by the general or the director, whoever that was at that time.

At any rate, after this memo went out on June 20th, when did you become Director?

DR. BECKER: September 3rd.

SENATOR AYALA: September the 3rd.

When did you discontinue the policy of records being shredded?

DR. BECKER: I notified -- on September 9th, all section chiefs were notified by the Chief Deputy Director to take no action on the policy. That's six days after --

CHAIRMAN LOCKYER: Do you have a copy of that with you?

DR. BECKER: I don't know if I do, but I will certainly ask my staff if they can locate one.

CHAIRMAN LOCKYER: The September 9th E-mail.

SENATOR AYALA: Six days after you became Director, you issued a policy to discontinue the shredding of documents?

CHAIRMAN LOCKYER: I don't think that's accurate. That's what you want to claim; it's just not accurate.

DR. BECKER: Well, let me --

CHAIRMAN LOCKYER: Does anyone have a copy of the September 9th, 1996 E-mail to section chiefs?

DR. BECKER: It was from the Chief Deputy Director, but he told them to take no action with respect to the policy at that time.

I revoked -- excuse me, Senator, to complete your question -- on October 1st, I believe it was, I sent a note to all staff indicating to take no action, and then I rescinded the policy, yes.

SENATOR AYALA: My understanding is that the practice didn't stop until the Wall Street Journal criticized your leadership. After that, you decided we'd better call off the signals; is that correct?

DR. BECKER: I don't believe so, Senator. I think we made it very clear to the section chiefs, and at that time I asked my staff and directed my staff to ensure that no implementation had indeed occurred. That was in early September.

SENATOR AYALA: When you were the Deputy, I have no problem with you implementing the problem given to you by the Director. But after you became Director, my understanding is you waited until you were criticized severely by the Wall Street Journal before you discontinued that policy.

Am I correct, or am I wrong?

DR. BECKER: I was just handed a note here that my staff are going forward to find the September 9th E-mail message at this point.

I'm sorry, Senator, I missed your question.

SENATOR AYALA: My question was again that it's incorrect to believe that you discontinued the policy strictly

because of the criticism that the Wall Street Journal came up with in terms of your leadership of that department?

DR. BECKER: The action was taken early on, on September 9th, to tell staff to stop, not to implement the policy. That was well in advance of the Wall Street Journal article.

CHAIRMAN LOCKYER: Excuse me.

The Wall Street Journal is October 2nd.

DR. BECKER: I'm sorry. I was referring to September 9th in response to Senator Ayala's question.

On October 1st, I issued a statement to all staff to take no action. And October 10th, I believe, or around that time, there was a complete rescission of the policy.

CHAIRMAN LOCKYER: That's correct. October 10th is the rescission date.

DR. BECKER: But I think, Senator, if you look at this, this is a policy, Senator and Mr. Chairman, Senators, this is a policy that was developed under a previous director.

SENATOR AYALA: I understand.

DR. BECKER: Please look at my policy. Look at what I have put in concrete in that policy, in that statement that I have made.

And I don't think that CAPS will have any problem, nor any other scientist, with my policy, which states clearly that any material that a scientist deems complete, whether it's draft or not, becomes a record to be retained. That is my policy.

SENATOR AYALA: I understand the reason for your

implementing the policy when you were the Deputy Director. You had no choice.

But after that, I have a question as to whether you acted fast enough. If you really believe that it was the wrong policy to pursue, that you didn't discontinue it until you were severely criticized by the Wall Street Journal. I have a problem with that, sir.

DR. BECKER: Thank you, Senator. I think that the record will show that we took action soon after my appointment as Director.

That I asked that my staff ascertain and completely be certain that no implementation had occurred and was assured of that, that no implementation had occurred.

CHAIRMAN LOCKYER: Dr. Becker, it appears that this is revisionist. That is, now, we respond to press criticism and analysis also. So, I don't think it's singularly a basis for a fail to confirm, other than to the extent that you want to try to rewrite history.

Your memo in September doesn't say don't do it. It says, let's figure out the PYs before we implement the policy.

Then there's a whole bunch of criticism, L.A. Times editorials, Chronicle stories, the Wall Street Journal and others that are very critical. And the lawsuit that's filed, and ten days later, you discontinue the policy. That's the chronology.

Now maybe it takes ten days, or six months, to decide that this is a bad policy. I can understand that.

But to tell us that somehow you're blameless is disingenuous.

DR. BECKER: Well, I don't think I'm being, with due respect, Mr. Chairman, I don't think I'm being disingenuous.

I think that I did act promptly in my actions. I think that they speak clearly. We did, and I did, rescind the policy of the previous director. And I ask simply that you judge me on the policy that was developed under my directorship.

CHAIRMAN LOCKYER: What happened to the other director? Where'd he go?

MS. HAYNIE: Health Services. He went to Health Services, an appointment there, Jim Stratton.

CHAIRMAN LOCKYER: Still in Health Services?

MS. HAYNIE: He is in a position at Health Services now.

SENATOR BRULTE: Will he be before us for confirmation?

MS. HAYNIE: It's not a director. I don't know what level it's at.

SENATOR BRULTE: Senator, I have a question.

Walk with me through this chronology. You were appointed and assumed your responsibilities on what day?

DR. BECKER: Well, I actually assumed -- I believe I was sworn in, assumed the responsibilities on September 4th, but I believe the appointment occurred late in the evening of September 3rd.

SENATOR BRULTE: September 4th. Do you remember

what day that was?

DR. BECKER: I don't recall what day of the week that was.

SENATOR BRULTE: Maybe somebody on the staff of the Committee could find that out.

And on the 9th, your assistant sent a memo that the Chair suggests doesn't exist, but we may or may not be able to find it in your records?

CHAIRMAN LOCKYER: I don't say it doesn't exist. I said it was not supplied to us when we asked for such data. A whistleblower has privately supplied it, and it does not, Senator, it does not confirm the Director's claims about the content and purpose of that document. That it was clearly budgetary, not programmatic or policy change.

SENATOR BRULTE: It would certainly be helpful if every Member of the Committee could see the document.

CHAIRMAN LOCKYER: I agree. I don't have it. What I have is a two-sentence summation.

SENATOR BRULTE: Is it the same whistleblower that remembers a second memo that they don't have any documentation for?

MS. MICHEL: It was provided by the Department.

CHAIRMAN LOCKYER: They gave us a summary. You have it in your summary sheets. The Department gave us that, but they didn't give us the document.

If you'll look at last one on Page One, you can read the last summation from the Department about what that document is. It would sound to me like it's purely budgetary

and managerial.

SENATOR BRULTE: You assumed the job on the 4th?

DR. BECKER: That is correct, sir.

SENATOR BRULTE: Which was a Wednesday?

DR. BECKER: Yes, that is correct.

SENATOR BRULTE: And you reversed the policy?

DR. BECKER: The Chief Deputy Director issued that memo on the 9th, after briefing me of the concerns.

SENATOR BRULTE: So, he issued it on Monday?

DR. BECKER: I don't have a calendar in front of me, but I guess that's correct, sir.

SENATOR BRULTE: So, if we can find that memo where it was rescinded, we would find that you were sworn in on a Wednesday, had basically two working days, and on the third full day of your appointment, you rescinded?

CHAIRMAN LOCKYER: Senator, not true. That's just not a correct statement of fact.

SENATOR BRULTE: I'm just asking the witness --

CHAIRMAN LOCKYER: The rescission, according to his records, is October 10th. That's the rescission memo date.

SENATOR BRULTE: Would you review again the message that your deputy sent?

DR. BECKER: The deputy communicated to all the section chiefs and told them not to implement any draft plan for -- with respect to the records management policy.

CHAIRMAN LOCKYER: Until we have complied the department-wide PY allocations. It's a budget document, Senator. It has no comment that we can see about the

appropriateness of the shredder policy. It's about budgeting.

Now, it may be fine that a policy that's been there for several months would take a month or so to turn around. That may be okay.

What's incredulous to me is to try to deny it and me disassociate himself with a policy of this Department.

And then I add to that the fact that all the business groups, and particularly the agricultural groups, strongly support his confirmation, and all the environmental and community health groups, with rarely an exception, oppose his nomination. And you begin to see a pattern of politics affecting management decisions.

We'll get into that latter half, I guess, with more testimony. But, you know, we have Federal EPA having dozens --

SENATOR BRULTE: Let me complete my questions.

So, on your third full day in office, at your direction, the Deputy Director put the policy in abeyance for whatever reason?

DR. BECKER: That's correct, Senator.

SENATOR BRULTE: And then how many days after you assumed office did you rescind the policy that had not been implemented from the third day you were there?

DR. BECKER: Within three or four weeks, Senator. Within that time period, I also directed my staff --

CHAIRMAN LOCKYER: Within what?

DR. BECKER: Three or four weeks, Senator.

Within that time period, I directed my staff to

be sure, doubly sure, I don't recall exactly term I used but I think doubly sure, that no implementation had occurred. And that was the information that staff obtained at that time.

On October 1st, I issued a memo to all staff, telling them not to implement the policy. And on or about October 10th, as I recall, I made a formal declaration of rescission.

CHAIRMAN LOCKYER: That's correct.

DR. BECKER: It's important to note again, I would just ask you look carefully at the policy that I put together, because I think this speaks for my commitment to the firm, sound, scientific method to be utilized within the Office of Environmental Health Hazard Assessment.

CHAIRMAN LOCKYER: When you sent the memo, which was brisk or brusque, or both, as the Deputy Director to the section chiefs, what were you doing then?

DR. BECKER: I'm sorry?

CHAIRMAN LOCKYER: The memo saying, "Get with it and get these work plans in."

DR. BECKER: We were behind the times in terms of getting our work plan in. The new fiscal year was starting. We needed to budget for that new fiscal year. We were behind time with respect to that. We needed to make sure that we had all of our activities, if you would, and work plan clearly laid out, and our priorities clearly laid out.

This was just one of those. And typically when you do a budget in this regard, you have more things to do than people or dollars to do them. You have to figure out what's the

give and take. That's where we needed that estimate of that activity, but also the estimate of the activity to do a, say, risk assessment for lead, or the risk assessment for diesal exhaust, or these other types of things.

Then it all gets put together with the section chiefs, and the higher ups figure out what it is we are going to proceed upon in terms of priorities.

CHAIRMAN LOCKYER: And you knew under pre-existing departmental policy that part of the budget or time allocated would be to document review and winnowing.

DR. BECKER: That was part -- that was a policy, just like prevention of sexual harassment was a policy, or other types of things were administrative policies.

CHAIRMAN LOCKYER: So, you just inherited that, in effect, as policy while you were a deputy?

DR. BECKER: That was a policy that was developed when I was a deputy, yes.

CHAIRMAN LOCKYER: Do you remember participating in discussions of that policy?

DR. BECKER: Very, very little, Senator. My only discussion that I can recall dealt with making sure that within each section in the implementation phase of that policy, that there be senior scientist in charge of any review of any scientific document. I was particularly concerned that I didn't want a file clerk reviewing a scientific document and making any kind of action or decision.

The other thing I wanted to be sure of was that there was -- this, again, was brief a conservation that I

recall -- that there was adequate opportunity for discussion with the senior scientists or any scientists with legal counsel before any action occurred. That was within my realm and my responsibilities as Deputy Director.

CHAIRMAN LOCKYER: You mean to recommend that they discuss it with a lawyer?

DR. BECKER: Yes, that's correct, and to recommend that the attorney discuss that with staff.

CHAIRMAN LOCKYER: Was counsel internal, or was it Attorney General, or how were you represented?

DR. BECKER: I believe at that time counsel was internal.

CHAIRMAN LOCKYER: Prior to the April directive on documents, your recollection is just some minimal discussion of that policy?

DR. BECKER: Yes, that's correct.

CHAIRMAN LOCKYER: Do you think it got decided or debated by others, or did it just sort of come down?

DR. BECKER: The administrative policies like that were not within my bailiwick, Senator.

CHAIRMAN LOCKYER: But as a deputy, you didn't participate in discussions?

DR. BECKER: As I said, only very briefly, and only on those two issues which were in, I believe, my purview as Deputy Director of Scientific Affairs.

CHAIRMAN LOCKYER: You mean after the policy was announced or prior?

DR. BECKER: I believe there was one discussion

prior, but that was at a section chiefs meeting with all of our section chiefs, not just me, but the chiefs of each and every one of our sections.

CHAIRMAN LOCKYER: That was the one time prior?

DR. BECKER: I believe so, yes. That's my recollection, sir.

CHAIRMAN LOCKYER: Somewhere we left you back at the dock. Are you ready to sail?

MS. HAYNIE: Whenever you're ready.

CHAIRMAN LOCKYER: Can you pick up where ever it was?

MS. HAYNIE: Well, I can eliminate some things.

CHAIRMAN LOCKYER: If you can eliminate, that's good.

MS. HAYNIE: I think one thing on the records retention, before I move on some other important facts, is that the concept of the records retention policy is not a budget issue. It's science issue; it's a public safety issue. It's also a constitutional issue.

CHAIRMAN LOCKYER: I understand that. Except that it being discussed as a budgetary matter.

MS. HAYNIE: I know. I just wanted to expand the thought.

CHAIRMAN LOCKYER: And we understand you may have a different view, and frankly, it sounds like Dr. Becker, perhaps, has a different view, that that's an inappropriate policy for the reasons that you've mentioned.

SENATOR BRULTE: Would you expand on what you

mean by it's a constitutional issue?

MS. HAYNIE: Well, because what the records retention policy would have done if it had been fully implemented is, anything that was not part of a final report, that was not part of the deliberative decision making in the final outcome, could have been destroyed.

SENATOR BRULTE: Kind of like the way we do things here in the Legislature. Anything that's not part of the official record doesn't go into the official record?

MS. HAYNIE: Exactly. And so then, with scientific review, you may look at three different hypotheses and determine that one of them is the best route to take. Five years from now, when you're looking at the same question or a similar question, you may want to go and see why didn't hypothesis two and three make sense at that time. Maybe there's new information that the scientists have available at that time that gives them more perspective.

That would have been lost. It's sort of like, what I liken it to is, at one point, scientists thought the world was flat. It's the same exact concept. It's a continual learning process, and that would have been lost, that history.

CHAIRMAN LOCKYER: Just only because the analogy's been drawn, I must point out that when our records are transferred to archives, everything in them is transferred.

Now, an individual Member may cull out something that they don't want to send, but that's not the policy, Senator.

DR. BECKER: May I respond?

My policy would be very similar to what you just described, Senator, is that any record that a scientist deems completed, would be a record to be retained. That's the policy that I developed.

CHAIRMAN LOCKYER: I notice you used the word completed. I guess that may be part of the debate here.

DR. BECKER: Completed as even a draft. It says even a draft.

MS. HAYNIE: Well, at the time, Dr. Becker was the Deputy Director of Scientific Affairs, who these people reported to, and the message was clear to them that they were supposed to be implementing the records retention policy. And there was constant reminders in meetings beyond just the June, '96 memo that you have.

Also, too, CAPS and two of our directors --

CHAIRMAN LOCKYER: I'm sorry, you said something about records other than the June --

MS. HAYNIE: Other than the June, '96 memo that you have.

CHAIRMAN LOCKYER: What would be in those records?

MS. HAYNIE: No, there is also discussion about incidences when Dr. Becker reminded the senior toxicologists about implementing the records retention policy at the staff meetings for those individuals.

CHAIRMAN LOCKYER: Again, he's still the Deputy Director at this time?

MS. HAYNIE: Exactly.

SENATOR BRULTE: Are you a senior toxicologist?

MS. HAYNIE: No, I'm not, but I am here to talk on behalf of our members.

SENATOR BRULTE: Were you in any of those meetings where you heard Mr. Becker --

MS. HAYNIE: No, I was not, and I don't claim to be.

Also, when CAPS did meet with Dr. Becker and some of his people prior to this hearing, and we did discuss briefly about the records retention policy, and like you, yourself, Senator, we asked why the delay in withdrawing the policy from the time of his appointment.

The response that we received was a little confusing to us, because he said that they weren't sure what the issues were.

CHAIRMAN LOCKYER: When was this?

MS. HAYNIE: The meeting was held in April, when we met with Dr. Becker.

CHAIRMAN LOCKYER: But not subsequent to the September appointment as Director?

MS. HAYNIE: No, in April of 1997, this year, as a result of his appointment.

And we asked Dr. Becker why the delay in withdrawing the records retention policy last year.

CAPS took the position in March, 1997.

CHAIRMAN LOCKYER: It only took about a month. That's the delay you were asking about?

MS. HAYNIE: Yes, that's what we were asking about.

And when we were told --

CHAIRMAN LOCKYER: And the answer was?

MS. HAYNIE: The answer was that they were confused about the concerns about the policy, which was confusing to us because I had sent a letter in June of '96, outlining the concerns of CAPS that are similar to those of NRDC. So, I feel that they had advance notice of organizations concerned.

Moving on --

CHAIRMAN LOCKYER: Any other issues?

MS. HAYNIE: Yes, there are some other issues.

Continuing with our meeting with Dr. Becker and his staff, many times we've heard Dr. Becker use the term that he wants to promote good science and get the science right.

To begin with, from the scientists' point of view, that's a very odd statement, because it implies that the science was wrong before. And as I was just describing to Senator Brulte about why the history is important, scientific history is built on as we obtain new technologies or learn new things about applicable science. Then there's going to be a different evaluation, and we're going to learn something new about what we're studying.

Environmental science is the same type of situation as any other scientific field. And it's a very odd statement to make.

SENATOR BRULTE: When was this meeting, this

meeting you're referring to?

MS. HAYNIE: With Dr. Becker? I believe it was in April of 1997, while he was Director, this year.

CHAIRMAN LOCKYER: This year.

MS. HAYNIE: We're totally into it now.

CHAIRMAN LOCKYER: This year it was asking about why was it slow a year ago, or nine months ago.

Of course, some of us think for a bureaucracy to change directions about anything in a month is pretty good.

SENATOR BRULTE: Speedy.

CHAIRMAN LOCKYER: But this is now a different matter.

MS. HAYNIE: Right.

SENATOR BRULTE: Let me follow.

Do you really believe, I mean, obviously you do, but if somebody says we've got a job today, let's go out and make sure we do it right, do you think everybody in the world draws the conclusion that the operation does things wrong just by the fact that you have to say that?

I mean, I don't understand how you can draw the conclusion that when Mr. Becker says we've got to get the science right, that somehow implies that everything that's come before it has been wrong. I don't draw that conclusion. I wouldn't draw that conclusion from a statement like that.

MS. HAYNIE: I think primarily the term that's very popular right now is good science, and he has expanded upon that term using good science in many of his discussions.

And most people don't have a significant

background in science, and I think to them, it's just good or bad. They don't pull the whole thing together. That's the concern. I was just trying to make that just for clarification.

CHAIRMAN LOCKYER: Well, Dr. Becker made the comment in his opening statement that he wishes it be based on sound science. I think, frankly, that's probably universally desired.

Lay people often have problems understanding why two scientists can have different opinions about a matter, or ten or whatever. And they understand with lawyers, why you have three lawyers and five opinions, but they don't understand that often with the scientists. It's, I guess, somewhat analogous.

SENATOR BRULTE: I don't know that scientists get paid based upon the number of opinions they have.

MS. HAYNIE: I'm sure they don't.

CHAIRMAN LOCKYER: I think there are some who do. They're called consultants.

MS. HAYNIE: I'm going to be discussing a few of the specific projects that have been worked on during Dr. Becker's tenure as the Director, and then Jennifer will also testify on a couple things she can personally discuss.

First of all, there was a study on two -- a study for indoor air quality for schools throughout the State of California. This actually had begun to be planned in January of 1995.

There were inter-agency agreements with the Air Resources Board and also with the Lawrence Livermore Laboratories, and cooperative efforts with the Energy

Commission, Health Services, Department of Education, U.S. EPA, and school administrators. The reason --

CHAIRMAN LOCKYER: Is this all the same topic?

MS. HAYNIE: All the same topic. It was a coordinated effort. The scientists spent many hours coordinating and developing that relationship to evaluate indoor air quality in schools statewide.

This project was supposed to start in October of 1996. Shortly before the implementation date, Dr. Becker decided to cut the project. One way that this was implemented was by cutting the funding and transferring the funding elsewhere. But the project was cut prior to the funding transfer.

There was objections based on -- or, proposed objections that the relationship with the Air Resources Board was not comfortable for him. And also, the other reason for cutting the program was because, if there was a result that proved that the State of California needed to handle or spend money to resolve indoor air quality issues in the schools, that then the State of California would not be able to provide that funding to make those corrections.

CHAIRMAN LOCKYER: These were the explanations given, as you recall?

MS. HAYNIE: As I have been told from the scientists.

CHAIRMAN LOCKYER: For the change in project scope?

MS. HAYNIE: Right, from the withdrawal of the

project.

CHAIRMAN LOCKYER: It just went away entirely?

MS. HAYNIE: Yes, it was not pursued.

CHAIRMAN LOCKYER: It's technical enough. Maybe we ought to stop and ask you for a comment, if you'd wish to.

DR. BECKER: That's not the way I recall it. Of course, we did have a budget problem, and there was a need to transfer funding. Of course, one of those issues in transfer of funding, when you have outside contracts, and you also have employees is, which do you support? Your state civil service employees or your outside contractors.

I think I made the right decision. We decided to cut the contracts and support our state civil service CAPS employees.

So, I am a little incredulous to be criticized for that move at this point.

CHAIRMAN LOCKYER: This indoor pollution discussion, or air quality, was an outside, out-house rather than in-house?

MS. HAYNIE: There was a coordinated effort that was supposed to occur. And there was work with Lawrence Livermore Labs, the ARB, and several other agencies, as I've been told.

CHAIRMAN LOCKYER: But did you understand at the time, or anyone present, that this was to help maintain the slots for in-house expertise?

MS. HAYNIE: No.

SENATOR BRULTE: Let me just me follow up.

Once again, I want to be real clear on this. You weren't in any of those meetings?

MS. HAYNIE: No, I was not. I'm not a scientist for the state. This is second-hand.

SENATOR BRULTE: You represent people who have told you something that may or may not be correct. I can't testify to it that you know for a fact?

MS. HAYNIE: That's true. I can only express what I have been told.

SENATOR BRULTE: And you have Air Resources Board, Lawrence Livermore Labs, and a whole host other agencies.

Was this agency funding the entire project?

MS. HAYNIE: I'm not totally clear on the answer to that question.

SENATOR BRULTE: Could that project go on without funding from this agency?

DR. BECKER: I'm sorry, I missed that question.

SENATOR BRULTE: Were you funding this entire project.

DR. BECKER: I don't have that information in front of me, sir. But as I do recall, one of my questions to staff was, had they worked with the State Department of Education in terms of the survey, and the answer was no. And I asked that they please go do that, because the State Department of Education and also -- I can't recall what the other department who is responsible for school construction and maintenance needed to be involved in such a type of survey. And

I thought that was important, to work with them as partners as well.

That was part of my direction at that point.

SENATOR BRULTE: So, that project is not ongoing?

DR. BECKER: We do still have an indoor air project, yes, sir. I can't tell you if we have a survey that's being planned at the present time because of funding issues. But it may well transpire that we do. I just don't have that information in front of me.

SENATOR BRULTE: I'm confused.

Did you spike the program, or did you not spike the program? It either isn't going on or it is. The witness says from what she's heard, it isn't.

DR. BECKER: We have an indoor air group program, an indoor air group within the Air Toxics Program that continues to look at indoor air problems. One of the areas, of course, would be schools.

With respect to the survey, I believe that there is no funds to support the outside contractors to conduct such a study, and that those funds were redirected, if you would. And it's my understanding -- I can double-check -- to support state civil service CAPS employees.

CHAIRMAN LOCKYER: Could I ask you on that?

DR. BECKER: Yes. Mr. Senator, I'm sorry.

I have just been notified that we have two witnesses who would like to testify on my behalf who need to leave at 4:00 P.M.

CHAIRMAN LOCKYER: They're not going to get here

until we're done with these people.

DR. BECKER: Thank you.

CHAIRMAN LOCKYER: Or they can come back another day when it's convenient for them.

You mentioned surveying that was discontinued. I think that's what you said with respect to indoor air qualify. Is that right, Dr. Becker.

DR. BECKER: Again, I would recall -- as I recall, there was a contract with one of the Lawrence Laboratories to conduct a survey.

CHAIRMAN LOCKYER: That's what was eliminated?

DR. BECKER: Correct, not our indoor air program by state civil service employees. That program exists and continues today.

MS. HAYNIE: But the cooperative effort of the statewide survey for schools, which was supposed to be in this school year, was when it was supposed to be conducted, that was stopped in September of last year.

CHAIRMAN LOCKYER: That's this Lawrence Lab survey?

MS. HAYNIE: Along with other -- right, it was a cooperative effort, and that survey, specific survey, was cut.

SENATOR BRULTE: Let me just ask a question, and this calls for you to draw a conclusion.

Would you think it makes sense to loop the State Department of Education and do a survey like that, if we were, in fact, going to do it?

MS. HAYNIE: Yes. And I was told that there was

contacts with the Department of Education, so I don't understand the comments by Dr. Becker.

I agree with you.

SENATOR BRULTE: Were you a part of the working group?

MS. HAYNIE: No, all I can do is express to you what I have been told.

Let me get through one -- more thing, and then let's turn it over to Jennifer, who can give you more specific direct testimony.

The other thing I'd like to briefly describe is an anglers' survey that was to be conducted in the San Francisco Bay area, fishermen.

CHAIRMAN LOCKYER: What kind of survey?

MS. HAYNIE: Angler. And it was to also determine the consumption of fish that was caught during, you know, fishing.

And the thing that's important here is, the survey was conducted, but there is a critical question which the staff did obtain authorization to use. The question was to ask ethnicity.

Bill Soo Hoo, who is the chief counsel at OEHHA, did authorize their use of that question. And the survey was supposed to begin -- this is back when he was Deputy Director -- on June 23rd of 1996. Dr. Becker had demanded that the ethnicity question be taken off of the questionnaire. The survey was to begin the next morning at 9:00 o'clock A.M.

The results of the survey were therefore changed

because that information was not provided. A lot of the minority groups do fish in the San Francisco Bay to obtain their subsistence.

And when the report was sent for peer review, the comments that came out were, it seems like, you know, the ethnicity should have been discovered so it would be a more meaningful report.

When the peer review comments were sent to management, that comment was stricken from the peer review report. So, this is a concern.

SENATOR HUGHES: I just have to ask you if that is true and why?

I don't know what it would have to do with the results of the entire report.

DR. BECKER: I have no recollection of that whatsoever, other than making sure that such a question was reviewed and approved by staff counsel because of the concern about a state agency conducting a survey requesting information regarding ethnicity. That's my only recollection. I do not recall --

SENATOR HUGHES: Would you repeat that again? Your recollection was what?

DR. BECKER: My recollection was making sure that the question related to ethnicity was reviewed by staff counsel because of concern about any state agency asking any question related to a person's ethnicity. I wanted to make sure that we were above board on that, and that's why the referral was to staff counsel.

I don't recall at all the statement or the allegation that was made here that I directed that that question be removed. I don't recall that.

SENATOR HUGHES: So, when the question was referred to staff counsel, what did staff counsel advise?

DR. BECKER: I don't have that information in front of me. I'd be glad to get it for you.

SENATOR HUGHES: I would be interested in finding out what the advice of the staff counsel was.

DR. BECKER: It may simply have to do with how it was worded, you know, but I wanted to make sure that staff counsel, because of the sensitivity that people experience when dealing with questions of ethnicity, that we were -- especially by a state agency -- we were clear and within our purview, if you would.

I'll be glad to find out.

SENATOR BRULTE: By clear, you mean you want to make sure you didn't violate the Governor's Executive Order concerning that.

DR. BECKER: That's correct, and any other existing laws, rules, regulations.

CHAIRMAN LOCKYER: When did the Executive Order come down; do you recall? Senator, do you recall when the Executive Order was issued?

SENATOR BRULTE: Probably before the '94 election. That would just be my guess.

CHAIRMAN LOCKYER: I think it was before the '96 election.

SENATOR BRULTE: It could be.

DR. BECKER: But Senator Hughes, in response to that, I will get back to you on that.

SENATOR HUGHES: Thank you.

CHAIRMAN LOCKYER: I think it was either late '95 or early '96. It may go to a modest piece of evidence that you're unduly sensitive to the Governor's philosophy. I think that's the --

MS. HAYNIE: However, though, I've had several scientists inform me that they were directed to take that question out and it totally changed --

CHAIRMAN LOCKYER: I understand, but he has no recollection of doing that, and the management document, that didn't include peer criticism of the omission, seems to not be before us, either. If anyone could ever show us that, maybe it would be useful, but I think Dr. Becker doesn't recall seeing or editing such a document either.

DR. BECKER: That's correct, Senator.

MS. HAYNIE: Before I turn it over to Ms. Mann, I'd like to make a point also about the reason why I'm here testifying instead of the scientists, which is, the environment of OEHHA has become very autocratic. The scientists have been told what their decisions should look like, and they have been told if they do the study in their normal way, how to change their conclusions.

So, as a result, there's such a high level of fear of coming out and speaking on their own behalf.

The reason why Jennifer Mann is here to talk to

you today is because she left the Department in April of this year. So, she is not in the same situation of having her economic stability being threatened.

They're very afraid of reprisal, and I think rightly so in a situation like this, where it's very polarized.

MS. MANN: My name is Jennifer Mann, and as Kristen Haynie said, I am a former employee of OEHHA.

CHAIRMAN LOCKYER: What did you do use to do there?

MS. MANN: I worked as an epidemiologist in the Air Toxicology and Epidemiology Section for seven-and-a-half years.

I'm going to try and address some of the questions that came up. In addition, I have some remarks that raise some new issues possibly. I'm going -- my remarks are really restricted to those projects that I had a role in while I was there.

While at OEHHA, there was also a lot of discussion, so I know some of the same people that may have been involved in some of the earlier projects that Kristen was talking about. I might be able to shed some light, hopefully.

CHAIRMAN LOCKYER: Tell us mostly what you know from your own personal experience.

MS. MANN: Right.

I have a master's in public health and in epidemiology. For last three years, I've been studying for my doctorate at UC Berkeley.

While I was at OEHHA, I had the privilege of

working with a very distinguished group of staff scientists at the Air Toxicology and Epidemiology Section of OEHHA. The staff there includes epidemiologists, toxicologists, public health physicians, and most of these staff possess doctorate or medical degrees. Therefore, they have qualifications that are similar, if not even stronger, than Dr. Becker's.

The toxicology staff has been in the forefront of developing improved methods for risk assessment, some of which are now used or in the process of being adopted by U.S. EPA.

The toxicology staff was -- had an excellent reputation even before Dr. Becker's arrival. Sometimes he likes to take credit for their expertise.

The epidemiology staff includes --

CHAIRMAN LOCKYER: Are they up here, or Berkeley, or where are they located?

MS. MANN: Both in Berkeley and Sacramento. I was located in Berkeley.

The epidemiology staff includes experts in the field of air pollution and environmental epidemiology. And the staff is dedicated to scientific excellence, but also has a very strong commitment to public health.

OEHHA's mission as part of Cal-EPA, and previously as part of DHS, the Department of Health Services, has been to evaluate potential public health and environmental hazards using the tools of science. This mission was carried out with little political interference until the appointment of Dr. Becker as Deputy Director of Scientific Affairs by Dr. Jim Stratton.

The entire atmosphere of OEHHA then changed. Dr. Becker had a political agenda, it was my impression, which was stop or slow the bad news which was coming out of OEHHA, and examples of this bad news are a report that air-borne lead found in some places in California can cause lead poisoning in children -- I'm going to talk about that report today -- and preliminary data showing that Lompoc may have elevated rates of respiratory disease, and I'll talk a little bit about that as well.

I can give you several other examples, but we don't have all day.

CHAIRMAN LOCKYER: We may.

MS. MANN: I may mention them.

CHAIRMAN LOCKYER: We need to make an informed judgment.

MS. MANN: Dr. Becker has attempted to distance himself from some of the changes that were made to documents or studies during time that was he was Deputy of Scientific Affairs. But Dr. Stratton, who was the Director of the Department at the time that Dr. Becker was Deputy Director, his leadership was weak to nonexistent. And Dr. Becker more or less ran the Department while he was Deputy Director of Scientific Affairs.

I have to say that it's infuriating to hear Dr. Becker distance himself from implementation of the original records retention policy. He did appoint senior staff to arrange a plan to implement the policy. We were continuously told at section meetings that we should be getting ready to

implement the policy.

And it also came at a time when conclusions of documents were being either watered down and changed. So, there was a lot of suspicion about the intent of the policy, which was, he said, to protect pre-decisional deliberation, but in our mind looked like it was destroying the quote-unquote, "evidence". It was actually instructing us to shred documents that were our position, and then all that would be left was the watered down or changed document.

Under Dr. Becker's leadership as Deputy Director of Scientific Affairs, and later as Director, risk assessment documents have been endlessly delayed and our conclusions watered down. Epidemiologic studies were cancelled, and finally, data and scientific arguments not reflecting the decisions of upper management were to be destroyed. And there I'm talking about the records retention policy.

CHAIRMAN LOCKYER: So, you're certain some things were destroyed?

MS. MANN: Were to be destroyed, was my wording. There was a staff member --

CHAIRMAN LOCKYER: He mentioned one, but that there was a subsequent re-review, and that it appeared to not involve anything that was important to maintain.

MS. MANN: My wording was, were to be destroyed, because the scientists that I worked with had no intention of destroying any of that, document policy or not.

CHAIRMAN LOCKYER: Civil disobedience.

SENATOR BRULTE: I'd like to follow-up on that.

CHAIRMAN LOCKYER: Had you completed that point?

SENATOR BRULTE: I'd like to go back to the one prior to the one you just started.

You're critical of Mr. Becker for implementing a policy that was written, generated, approved of by one of his superiors.

Is it your position that in the hierarchical model of this bureaucracy, people who follow policy are somehow --

MS. MANN: No. I'm actually being specific to this policy, and also the role that Dr. Becker had as Deputy Director in OEHHA at that time.

I would not make general statements about policy, no.

SENATOR BRULTE: Clearly, you don't like the policy.

MS. MANN: The records retention policy, no.

SENATOR BRULTE: You know, I'm not a scientist. It's a given, I guess, not too many people liked the policy, based on what I've seen, and Mr. Becker himself reversed it.

MS. MANN: Right, and there was also concern because of the general atmosphere in OEHHA at that time under Dr. Becker as Deputy Director.

SENATOR BRULTE: At the time the policy came down, did you believe it to be an illegal policy?

MS. MANN: I was not sure if it was an illegal policy, but there were discussions as to whether or not it was legal.

SENATOR BRULTE: By the lawyers in the department?

MS. HAYNIE: There was a debate even amongst the scientists who were asked to implement it. I believe that's when they first contacted me about it.

SENATOR BRULTE: So, with the exception of this policy, you believe generally it's a good idea for people who work within a hierarchy to implement the policies as directed by their superiors within the hierarchy?

MS. MANN: I don't have a problem with people implementing policies that they're instructed to implement by someone higher up in the hierarchy, no.

I did have a problem with Dr. Becker trying to distance himself, and distance himself from the original records retention policy, because I think in that particular setting, it's not as he painted it.

I don't know personally what he said and what his role was prior to the policy, but once it was instituted, the original policy, he was the person who was very directly in contact with us, requesting us to implement the policy, or to get ready to implement the policy.

SENATOR BRULTE: Was he directly in contact with you doing anything else?

MS. MANN: Yes. I was -- I worked with Dr. Becker on a risk assessment of lead, which I'll talk about in a minute.

SENATOR BRULTE: So, he would be the one that would normally be interacting with you?

MS. MANN: No. Normally, what do you mean?

SENATOR BRULTE: I asked you the question, is this the only thing he interacted with you on, and you said no, you interacted with him on risk assessment.

MS. MANN: Let me make something clear.

There is a hierarchy in OEHHA. I have -- I had a unit chief. Above that person was a section chief, and above that person is OEHHA management.

So, the orders were given to the section chiefs. The section chiefs would then disseminate the orders to their staff at section meetings.

So, my contact with Dr. Becker on records retention was through that process.

SENATOR BRULTE: That was within the normal scope of his duties.

And your criticism is that you think he may have enjoyed implementing it when he was the Deputy Director.

MS. MANN: Right.

SENATOR BRULTE: And that he may want to say, I really didn't enjoy doing it. I was just doing it because I felt like it was my job to follow the rules?

MS. MANN: Right.

SENATOR BRULTE: And you're happy that, three full days afterwards, or a month afterwards, or whatever, the record ultimately shows he reversed that policy?

MS. MANN: Yes.

SENATOR BRULTE: Did you ever tell him that.

MS. MANN: Did I ever tell him that I was happy

he reversed the policy?

SENATOR BRULTE: Yes.

MS. MANN: I'm not sure that I told him that specifically. We did have discussions with management after the policy was rescinded about what our feelings had been about it.

CHAIRMAN LOCKYER: Did you compliment him for reading The Wall Street Journal, L.A. Times, and other critical documents prior to the new policy reversal?

MS. MANN: No, I did not.

In my last few months at OEHHA, I worked on a revival of a project that Dr. Becker had previously cancelled, which was a descriptive analysis of hospital discharge data from the community of Lompoc, California, to determine if there were elevated rates of respiratory disease in that community.

The first time this analysis was attempted, it was part of a larger report of health problems in Lompoc, and it was cancelled. The analysis was cancelled by Dr. Becker without explanation.

I want to be clear that I didn't work on the first phase of this project. I worked on the second phase, which I'm going to talk about.

But in that first phase, the scientists were ordered to stop working on the analysis and were not allowed to discuss it an among themselves or with the community of Lompoc. The conclusions of the remainder of the report were changed by the Director's office to indicate that there was no public health problem in that community. This change was made over the vehement protests of staff scientists, who subsequently

refused to have their names associated with the document.

After meetings with State Senator Jack O'Connell, management finally allowed this analysis of the hospital discharge data to continue on the condition that we write a protocol outlining our methods.

This was the criticism that Dr. Becker had leveled against the previous analysis, that there was no protocol, and that that was -- scientific process involved writing a protocol and having it peer reviewed.

The methods that we proposed using could be found in any basic epidemiology or bio statistics textbook. So, the protocol was written within a week of when they requested us to write it.

Yet, after we had finished writing the protocol, management wouldn't accept it until we had written up a work plan, outlining how we would write the protocol. But remember, the protocol was already written.

Then, after management approval of the work plan, management sent the draft protocol to 10 epidemiologists outside of OEHHA for external review.

CHAIRMAN LOCKYER: That's normal; isn't it?

MS. MANN: No.

Finally, the protocol was to be reviewed --

SENATOR BRULTE: Should it be?

MS. MANN: No. For this level of -- for what we were talking about, which was a preliminary analysis using very basic methods, not a study, it is not -- it is not normal procedure.

And if you're using new methods, if you're doing very extensive studies, something like that would be very appropriate, in my mind. But in this case, no. I thought it was -- I think everybody working on the project thought it was extreme.

Even some of the reviewers commented that the methods that were being used were very basic.

SENATOR BRULTE: So, the peer review process --

MS. MANN: Happened.

SENATOR BRULTE: Was that methodology or method what is --

MS. MANN: I think that was the purpose, yes. And I just want to say that requesting approval for this analysis makes about as much sense as requesting approval of a protocol for tying your shoes. These were very basic methods.

The approval process for doing this simple preliminary analysis began in December of 1996 and was still going on at the end of April, 1997, when I left my position at OEHHA.

The analysis itself would have taken less than six weeks. Actually, the bulk of the analysis had all ready been completed when Dr. Becker cancelled -- cancelled the previous version of it. And at the outset of this whole process, we were cautioned not to plan too extensive an analysis, because it was imperative that things not take too long.

This type of internal and external review is appropriate for studies that are using new methods, but not for

descriptive analysis using the standard procedures that we proposed.

The next thing that I want to talk a little bit about is my work on risk assessment of inorganic lead in air. I have substantial experience with studying the health effects of inorganic lead. For two years, I worked on a legislatively mandated statewide study which determined the prevalence of lead poisoned children in those communities deemed to be at highest risk.

I've spent ten years studying inorganic lead. But for the first two years, I worked on a project for the Department of Health Services, which was a legislatively mandated statewide study, which determined the prevalence of lead poison in children in high risk communities in California. And those communities that were considered to be at high risk were those with young children and a lot of old housing.

I'm also -- I've also worked on the risk assessment that I just referred to, which was an evaluation of the health effects of inorganic lead in air, and that's a project I spent seven years on, in large part because of Dr. Becker's delay tactics.

CHAIRMAN LOCKYER: You mean seven years was --

MS. MANN: Well, the last two years. And I want to give a few examples of how Dr. Becker delayed release of that risk assessment for almost two years.

We began working on the risk assessment in January of 1992. I actually started working on it the fall before that. I guess it's more like six years.

In January of 1994, all but one part of the document was approved by our scientific review panel. And the part that wasn't approved was our reference exposure level, which the panel thought was not sufficiently health protective.

A reference exposure level, or REL, is the level below which even sensitive populations are protected. And it's supplied as guidance --

CHAIRMAN LOCKYER: Even what kind of populations?

MS. MANN: Sensitive.

After the scientific review panel met with us at the January, 1994 meeting, they expected to see the document within three to six months.

The requested changes were made to the document, and the risk assessment was on the brink of completion when Dr. Becker arrived at OEHHA, about one year later, in February, 1995. And that was when he became Deputy Director.

SENATOR HUGHES: Excuse me.

Describe what's the sensitive population in this lead study?

MS. MANN: When we want to evaluate what the health effects are of a chemical, we need to consider not only -- not only the general population of California, but any sensitive -- people that might be more sensitive than the general population. In the case of lead, it's young children. So, because young children are more likely to --

SENATOR HUGHES: Inorganic lead, is that from paint?

MS. MANN: It's got lots of sources, but yes,

lead in paint would be one. We were actually looking at lead in air.

SENATOR HUGHES: Lead in air, but you were looking at lead in air and paint too? No, just in air?

MS. MANN: We were evaluating the health effects of lead from air, and to look at that, we also had to look at lead from other sources as well.

SENATOR HUGHES: Thank you.

CHAIRMAN LOCKYER: Are we in the Lompoc study?

MS. MANN: No.

CHAIRMAN LOCKYER: This is not Lompoc. That wasn't a lead issue?

MS. MANN: No. The Lompoc concern was that there were elevated rates of respiratory disease.

I want to give some examples of how Dr. Becker delayed the release of the document, and what happened to it in the almost two years, from the time he was Deputy Director to when it was eventually passed on October 31st of last year.

The first thing was that while Dr. Becker was Deputy Director, we were told to remove the reference exposure level from the document. Since it was removed, those who protect Californians have no guidance as to what safe levels of lead in air would be. And I said above, the scientific review panel had instructed the staff of OEHHA to strengthen the reference exposure level, not delete it.

CHAIRMAN LOCKYER: What do you mean by strengthen?

MS. MANN: They felt like our original -- they

told us that our original reference exposure level was not health protective enough. They felt that the numbers should be lower, which means it should be more health protective. We should allow only lower concentrations of lead in air.

CHAIRMAN LOCKYER: Who's the "they" in this instance?

MS. MANN: Scientific review panel works with the Air Resources Board.

When we do risk assessments, the are evaluated value by the scientific review panel. OEHHA does the health effects portion of the risk assessments for toxic air contaminants.

Another thing that happened was, we were instructed to take out all references to health effects at the current air lead standard. And our documents showed that if average air concentrations were this high in lead, half of all children would be lead poisoned. While current ambient levels are much lower than the standard, there's no legal restriction on lead emitting industries to produce emissions that result in air lead levels at the standard.

Another thing that happened was, we were told to refer to elevated exposures of lead in air which were actually experienced in California as hypothetical, presumably in order to appease the lead industry.

Finally, Dr. Becker filled the document with qualifiers, caveats, and uncertainties that were well beyond what an objective interpretation of the literature would indicate. There are thousands of articles on the health effects

of lead from the fields of epidemiology, toxicology, cell and molecular biology, and clinical medicine. And I think this statement is correct, that no pollutant has ever been more extensively studied.

In many cases, he asked us to add analyses to the document, which it is my impression that he thought would prove that lead in air did not affect the health of Californians. When these analyses showed the opposite, we were asked to remove them.

For example, he asked us to determine percent of a child's blood lead due to air lead across a wide range of air lead concentrations. That's a very reasonable thing to ask.

But we found that in an air lead concentration that was just below the standard, that 50 percent of the child's blood lead was due to lead in air. And when Dr. Becker was given the results of that analysis, he told us to remove it from the document.

CHAIRMAN LOCKYER: What did you do?

MS. MANN: We removed it.

CHAIRMAN LOCKYER: You have to do that.

MS. MANN: Right.

CHAIRMAN LOCKYER: Was there a reason based on science?

MS. MANN: Not that we were given.

DR. BECKER: The air lead levels, Senator, in California have dropped some 30 to 50 fold over last 20 years. Ambient air lead levels now are very, very low because lead has been removed from gasoline.

The lead air standard -- exposure at the lead air standard, to my knowledge, not widespread at all. So, from that perspective, it provided very little information.

CHAIRMAN LOCKYER: What do you mean "information"?

DR. BECKER: Information.

What we did add to that, and what's important to note, is that we added a model to this document which took some time to do. And model was to look at lead from all sources of exposure -- lead from paints; lead from soil; lead from air; lead from food; lead from other sources -- and integrate those because that's where the major exposures are occurring in children right now.

In the mid-1970s, Senator, about 90 percent of the children, ages one to five, had blood lead levels above the level of concern. Right now, that level has dropped to about 10 percent, largely because lead has been removed in air. But 10 percent of our children is still too many.

Now, where is this lead coming from? We think it's coming from several sources. We think it's coming from, perhaps, substandard housing and lead-based paint chipping off, that type of thing. Lead-based paint was banned in 1978, but virtually every structure almost constructed before then has lead paint in it.

From lead in soil, which has accumulated over the years from deposition, either from industry or from automobile-type of traffic. From lead in food, and from lead in other types of medicinal sources as well.

It can also occur, and we stated this clearly, from ambient sources of lead from lead industries. But to get at the real problem, which is to focus at the community level where the lead problem is now -- it's not wide spread throughout California -- you need to integrate exposures across all the pathways.

CHAIRMAN LOCKYER: I understand you might want to have a complete understanding of the sources of lead in a child's blood.

But if this study concluded -- maybe what you're saying is, they hadn't studied all potential sources and therefore couldn't conclude 50 percent is air borne?

DR. BECKER: There was a new model that had been developed. When I received the assignment, and my recollection is receiving that assignment somewhere around May of '95 from the Director to look at this lead document, I noticed that it was not comprehensive. It was not multi-media in nature; did not account for lead exposures and used this new model, which the U.S. EPA had developed, and which was being utilized at Superfund sites and other sites in other communities across the nation, which I felt was important to develop and include in our document.

So, I directed that that be inclusive. That model is really a tool, a tool that we can help communities affected by lead exposures identify where the major sources are, so that they can take the most appropriate and effective action to protect public health and environment. In some communities, it may be lead in air; in other communities, it may be lead in

soil; in other communities, it may be lead in paint.

CHAIRMAN LOCKYER: But they had concluded somehow that 50 percent --

MS. MANN: I'd like to make a clarification here.

What we were doing was analyzing the percent of the child's blood lead from -- due to lead in air across a wide range of air lead concentrations.

The standard -- just -- you cannot pay attention to my numbers right after I say them. The standard is 1.5 micrograms per meter cubed. At one microgram per meter cubed, 50 percent of the child's blood lead is due to lead in air.

Dr. Becker is correct that the ambient average exposure is quite low. But there is nothing preventing air lead exposures at the standard.

So, you can go on. I just wanted to make that one correction.

DR. BECKER: I would just say that the regulatory districts themselves, the Air Quality Management Districts if you're talking about emissions of lead into air, do have the authority to regulate that. They have the authority to regulate emissions, and to protect public health and the environment.

CHAIRMAN LOCKYER: Their management policies are significantly derived from your assessments.

DR. BECKER: And our assessment says we need to look at whole media, because the problem is at the community level at this point.

SENATOR BRULTE: Let me just ask a question.

You didn't include that originally?

MS. MANN: We did.

We did not include the model that Dr. Becker is referring to. We included two other approaches which both accounted for multiple pathways of lead.

And actually, when we used the model that Dr. Becker is referring to, it didn't -- it didn't make any difference in our results.

The other thing is that the model that U.S. EPA had developed, it was not actually for the purposes that we used it for in the document, but for people who actually had to implement control of lead in air in California, it would have been very expensive and maybe impossible to get all the information that they would really need to use that model properly. That was another reason why we had not originally included it. We tried to come up more practical approaches which did yield the same data.

CHAIRMAN LOCKYER: I've read the testimony of various people before Senator Sher's Committee on this and other topics.

Are these things you're mentioning the basis for Dr. Glanz's comment --

MS. MANN: Yes.

CHAIRMAN LOCKYER: -- that not only have there been completely unconscionable and unwarranted delay in the process, but the report had been rewritten.

MS. MANN: Yes.

CHAIRMAN LOCKYER: And "things we had approved had been changed." He doesn't go into detail.

Is that what he's talking about?

MS. MANN: Yes, he's talking about all of the things that I have mentioned, yes.

SENATOR BRULTE: What is the appropriate time frame for a study like that, or any study?

MS. MANN: I wouldn't be able to say, but I think this holds the record.

DR. BECKER: Senator, I think I would say that, you know, coming on as Deputy Director of Scientific Affairs, I got the study out the door. And we have a member of the science review panel here, Dr. Seiber, who can attest to the fact that the science review panel themselves reviewed the study, made some editorial changes, but approved it.

Eventually it went before the Air Resources Board, and they identified the chemical as a toxic air contaminant.

The bottom line is, that through my efforts, we have a more objective, scientifically valid study of the health effects of lead. We provided a tool that communities can use to identify the important sources of lead exposure so that we can protect the public health of our children, whether it's lead from water, or lead from air, or lead from soils, they can figure it out. And we're willing and able to help develop and work with the air districts to do that.

It takes a multi-media viewpoint in order to protect public health from lead exposure. That's what this new model did, and I'm quite proud of it.

SENATOR BRULTE: You said that that took six

years to get out?

MS. MANN: Actually, it was almost out the door in January of '95. In February of 1995, Dr. Becker came on board, and it was delayed another two years.

But you're right, there were other delays to the document before Dr. Becker came on board.

DR. BECKER: The document went before the science review panel, I believe, in September of '96.

MS. MANN: October 31st of '96.

DR. BECKER: I believe I had the assignment, it was given to me, to my recollection, around -- by my director at that time -- around May of '95. So, we had completed one draft, put that out for workshop, then a science review panel draft in October of '96, their review and approval of the report.

I think that's a good track record, and reflects my commitment to sound science, and my commitment to using the best, most up-to-date scientific information and providing the tools that are needed to protect public health of California's children.

Each community is somewhat different with respect to lead, but we have to have an integrated approach.

SENATOR BRULTE: So, that's roughly, what, 16 months, 17 months?

DR. BECKER: That's correct, with two drafts, correct.

SENATOR BRULTE: That would be normal.

DR. BECKER: I think that's about right.

SENATOR HUGHES: Then my question becomes, how many children's lives were lost? How many bodies were contaminated in the meantime?

You're talking about time of the study, and I'm talking about time of life. And we are talking about the most vulnerable population, the very young children who don't have regular health care, who come from poor families, who come from deteriorated inner city places where there's more lead exposure.

DR. BECKER: Senator, I agree with you. This is why we needed to include this new model which looked at exposure through paint chips.

SENATOR HUGHES: We've known about paint chips for 20 years or more, that peeling paint. We knew that because a little kids used to eat it in the ghetto, and they probably still do that now.

But that's not the kind of lead you're talking about. I congratulate you on your sophistication about the lead in the air, but everybody knows that lead is poisonous. And the people who are more exposed to it are the people in the ghettos and barrios that live in old buildings where the paint is peeling inside and outside. That's even if they have any outside paint left.

DR. BECKER: Yes, ma'am, Senator.

This model that we included that is state-of-the-art will allow for, and does provide for, the determination of the contribution of lead from that source. So, if that's the major source, then the focus for protecting those children for correcting that can be at that source.

If it's not air lead that's a major source, but lead in paint, this model allows one to do that. It's a model that runs on a 486 or 586 computer. It's not that sophisticated at this point.

But it is important to look at that, because we know from the standpoint of exposures, there are particular problems at the community level. Not at the ambient air level anymore within California, because lead has been banned from gasoline, but at the community level.

And sources may be different from community to community. Some communities may have problems with lead in soil.

So we need the latest scientific model in order to evaluate that. Some communities may have problems with lead in water, and not air, and not soil, and not that.

And this is what our risk assessment has provided. This is what the tools have provided. We've gone farther than that. We've made a commitment to work with the Air Resources Board and any local district or local health agency, to help them evaluate that in any way, shape, or form that we can in using this most appropriate risk assessment model.

SENATOR BRULTE: Walk me through the time frame.

When a report is completed at your level, it then, I assume, goes to a higher level within the chain?

MS. MANN: Yeah, it's an ongoing process. We complete a draft. It is released for public comment.

SENATOR BRULTE: And some drafts would take a week, and others -- you said this was three years?

MS. MANN: There were --

SENATOR BRULTE: Six years minus 15 months is four-and-a-half years at your level?

MS. MANN: There are publicly released drafts. I believe there were -- I think there were four or five publicly released drafts of the lead document.

SENATOR BRULTE: At your level?

MS. MANN: When you say at my level, you mean -- they were released --

SENATOR BRULTE: I have no knowledge of your operation. Mr. Becker suggests that he got the vehicle or the report on what month?

DR. BECKER: I believe it was, in my recollection, is sometime around May of '95.

SENATOR BRULTE: And it was out the door 16 months later?

DR. BECKER: As a final, yes.

SENATOR BRULTE: So, it goes from your level where? It goes directly to him?

MS. MANN: I actually -- I was one of I would say five people who worked on the document a lot. And one of those people was Dr. Becker. And we would work at meetings together, so I was a little bit confused by your terminology.

SENATOR BRULTE: You're saying, I think, without saying directly, you're suggesting that he used bureaucratic opportunity to slow down the release of your report.

My question is, what's normal timeframe for that? Once it leaves you and goes to him, if on average it then

becomes published in three months, well, then, 16 or 17 months is clearly a delay.

If, on the other hand, the average is 17 months, then 17 months doesn't seem like he slowed down the release of your report at all.

MS. MANN: The document was about to be released. The scientific review panel would have approved it, they told us that later, in January of 1995. It was released in October of 1996, so I see that as a delay. Actually it would be more like February or March of 1995 was when we were planning to get it out the door.

And the process is that we publicly release a draft. Then we have a scientific review panel meeting based on that -- the results of that meeting. If they approve it, then it goes to the Air Resources Board at their next meeting. That would have been -- that process would have taken about six to eight months.

SENATOR BRULTE: So help me here.

DR. BECKER: Perhaps I can help you, Senator.

SENATOR BRULTE: This was ready to be approved and released in January. It didn't even get on his desk until May?

MS. MANN: I don't think that's right. I have a different recollection.

DR. BECKER: I didn't join OEHHA until February of '95. I don't recall having the assignment from the Director until May.

MS. MANN: I remember him working on it soon

after he arrived, but I'm not going to say that I have that written down; I don't.

SENATOR BRULTE: But I believe your testimony was that you talked to the scientific review panel that said they were going to approve it in January.

MS. MANN: No, I would say it was almost out the door when he arrived in February. The scientific review panel expected to actually see it about a half a year before that, but we had also some delays from the Air Resources Board as well.

It was -- the entire document was approved, except for one section. That section was removed, and the rest of the document was changed while Dr. Becker was Deputy Director.

SENATOR BRULTE: Do you think he is responsible for the six-month delay by the ARB?

MS. MANN: I don't think he's responsible for the six-month delay by the ARB, but I think he is responsible for the majority of delay that happened after he became Deputy Director.

CHAIRMAN LOCKYER: What would be the reason for that?

MS. MANN: I'm not sure. I don't know.

CHAIRMAN LOCKYER: Is it just slowness in getting work done?

MS. MANN: No, I think what I was trying to convey here is that he gave us lots of tasks.

CHAIRMAN LOCKYER: Dr. Becker, it's obvious to me you're used to commanding people to do things, and they obey.

You don't here. When you're called on, talk.

DR. BECKER: Yes, Mr. Chairman, I understand.

MS. MANN: I think I lost my train of thought.

He gave us lots of tasks to complete, lots of extra analyses. The addition of this U.S. EPA model, which we incorporated. Then, when all of that was done, that took us to the mid to the end of summer of '96. He demanded that we -- or it'd be more like the beginning of the summer of '96. The document now out of date, and he asked that we update it.

CHAIRMAN LOCKYER: When you said there wasn't any different conclusion brought by the expanded modeling, what did you mean by that?

MS. MANN: Well, we look at the impact of lead in air on a few health outcomes that we chose to look at in the document because we figured they had the most public health significance.

It didn't change the health effects that appeared to exist from lead in air.

The way that we used that model, the way that we used the other two methods was, we had to make a connection between levels of lead in air and what happened in the child's blood. And the reason that we needed to do was, all the health literature looks at how levels of lead in a child's blood relates to certain health outcomes.

CHAIRMAN LOCKYER: Isn't it true that the work Dr. Becker wanted was more comprehensive?

MS. MANN: I wouldn't say that it was more comprehensive, no.

CHAIRMAN LOCKYER: At least his contention seems to be that it's useful to know what is the source: air, paint.

MS. MANN: It doesn't actually tell you that, but it does require that you have that -- it does require that you know what average paint lead levels are, average soil lead levels are.

CHAIRMAN LOCKYER: That's what the model does?

MS. MANN: That's what it requires. So, you need to put in that information to use the model well, and that is not the kind of information that most communities have.

So, we came up with other methods which assumed that, for example, that amount of exposure to lead in paint was constant over time, which makes sense, and that the amount of lead in water was constant over time, which also makes sense because the major source of that is lead solder and lead connections in piping from water companies.

So then, the thing that varies is lead in air. So, it gets at the same issue.

CHAIRMAN LOCKYER: Anything further on this particular study?

DR. BECKER: I would just answer, Mr. Chairman, that yes, indeed, it was indeed more comprehensive. We clearly have problems in California in certain communities with children who have excessive exposures to lead. This is what our study shows. Somewhere around percent of the children in California exceed the level of concern. What it showed. Somewhere around 10 percent of the children in California exceed the level of concern.

What it showed is that, no matter how you looked at it, whichever model, and this made it more comprehensive, that about 10 percent of the kids exceeded the blood lead level of concern.

Now, where is the lead coming from if it's not coming from lead being emitted from automobiles anymore because we don't have lead in gasoline. Where is it coming from.

In particular communities, it could come from particular sources. In trying to manage those sources, and this is where protection of public health comes in, you have to understand what the component or what the integral amount is from each source. Is it coming from soil?

CHAIRMAN LOCKYER: I understand.

So, your contention is that because of that reworking and expansion of the scope of the project, those additional sources became better understood and better measured than they were in the original work product?

DR. BECKER: I think what we've said is, we have pushed the risk managers to look beyond their single medium of exposure. The world is more complicated than just looking up in the air. We all know that what goes up, comes down. That's clear.

But what goes on the wall as lead paint can also chip off. What goes into the soil --

CHAIRMAN LOCKYER: The result, though, from the more comprehensive work a better understanding of those different --

DR. BECKER: Components, and then ultimately,

hopefully, a better understanding of what are the effects in each individual community, and what are most effective steps that can be taken to limit exposures to protect the health of children.

CHAIRMAN LOCKYER: You think those things were a product of the study that you directed, contrasted with what would have been a more limited work product as originally programmed?

DR. BECKER: Yes, I would agree, yes.

SENATOR BRULTE: That's been implemented, or the study has been acted upon by the appropriate --

DR. BECKER: Correct. The science review panel reviewed the study and approved it. It went to the Air Resources Board. They reviewed the study and identified lead as a toxic air contaminant.

SENATOR BRULTE: You started this six years ago, and part of the delay you say Mr. Becker is responsible for is to updating it because the data was stale?

MS. MANN: By the time that we had done all of these additional analyses and added the model, it was not -- it was updated as of -- we had had current information as of the beginning of '95. But by the time it was October, it looked like it was going to be the end of October that the document was sent out. We needed to update the document because the citations were old.

But there was no new evidence that changed any of our conclusions. It was just more a matter of making the document current, because now it's several years old.

SENATOR BRULTE: I want to be clear on this, because you're here testifying against a distinguished public servant.

You suggest on the record that part of the so-called delay was to make sure that stale data wasn't in the report. Is that improper or is that proper?

MS. MANN: It wouldn't had been necessary had all of these other delays not taken place. But once we were at that point, I think it was proper to update the document.

I guess my point was, it would have been unnecessary had these other delays not occurred.

SENATOR HUGHES: But are you saying that you did not find any new data?

MS. MANN: Yes, we did not find any new data, any changed information. And we knew that, because we actually had been reviewing the literature all along as part of our duty.

SENATOR HUGHES: Dr. Becker, how often did you meet with the lead industry officials --

DR. BECKER: I don't --

SENATOR HUGHES: -- to discuss the things that you suspected, to discuss the information that had originally been found? Have you ever met with the lead industry?

DR. BECKER: We serve as consultants to the Air Resources Board in this matter and in all matters related to toxic --

SENATOR HUGHES: You didn't answer my question.

DR. BECKER: -- air contaminants.

I was going to try and explain that, Senator

Hughes.

I have met with representatives of the lead industry at the request of the Air Resources Board, but with our staff scientists.

SENATOR HUGHES: How frequently --

DR. BECKER: I believe Ms. Mann -- we provided that information to Senator Sher. I'll be glad to provide that information to you as well.

SENATOR HUGHES: Is it that complicated? I mean, you met with them once, you met with them five times? Within the past 16 months, how frequently?

DR. BECKER: I only recall meeting with them once or twice, but always with our -- as Deputy Director, not as Director, and always with our scientists there to discuss the scientific and technical issues.

SENATOR HUGHES: So, you have met with the industry over a period of time while they're cranking out the new non-new-information?

DR. BECKER: The Air Resources Board has met on a number of occasions and requested that our staff scientists participate and discuss scientific issues with their scientific experts as well. That is the information that we have provided, and we'll be glad to get you a copy of that.

SENATOR HUGHES: But you did not yourself initiate any meetings with people from the lead industry based on the new non-new-findings?

DR. BECKER: I did not initiate any meetings at all with the lead industry for any reason whatsoever that I can

recall.

I can tell you this, that certainly this is not, and I would not classify it as not-new-findings. This is new scientific information, and new tools that can help the risk managers really prevent public health disease from occurring in our children. It's very important to understand that.

SENATOR HUGHES: Do you conclude that the children who were most affected by lead contamination, be it in the air, be it in the soil, or what have you, are poor, inner city children who are economically deprived, who live in economically deprived environments?

DR. BECKER: The conclusion, I think, is contained in our document very similar to what you've stated there, yes, ma'am, that there is a difference in terms of the level of children based on ethnicity in terms of their blood lead levels, and it probably does relate to housing, perhaps, differences.

SENATOR HUGHES: And the populations that would occupy this housing would be from what the young lady described as the sensitive population? Small children and more small children in crowded conditions would be the subjects of this contamination?

DR. BECKER: Yes, in any health risk assessment that we do, including lead, we look at not only the normal population, but any sensitive subpopulation. With lead, because children's nervous systems are developing, and because they absorb lead more readily than adults, they are the most sensitive population for the narrow toxicity of lead. That's

been known for some time, and we are very concerned about that.

CHAIRMAN LOCKYER: So, you were able to ask ethnicity questions with respect to this study?

DR. BECKER: We did not. We used published literature in this regard.

CHAIRMAN LOCKYER: Did they include it?

DR. BECKER: Yes, they did.

CHAIRMAN LOCKYER: Ms. Mann, I want to make sure you've concluded, or if you had other things that you want to tell us.

MS. MANN: I did, but I actually want -- there's one other things that I want to read, tell you.

There's other things on lead, but I think we've done that to death a little bit.

CHAIRMAN LOCKYER: There's going to be a chance for supplementary oral and written comment.

It's obvious to me that we've been close to three hours, and it's going to take a lot more time to get through the testimony. So, we're about to stop. I think you're sort of the wrap-up for this segment, and then we'll go on to others when we resume next time.

MS. MANN: I just want to say, because of all the things that we've discussed, some of which Kristen mentioned, and some of which I mentioned, there was quite a bit of frustration from the staff.

And Dr. Becker has instituted an open-door policy. Each week, staff are invited to a brown-bag lunch, which is led by Dr. Becker, or another member of OEHHA

management. Unfortunately, although the door is open, the hostile, intimidating atmosphere does not encourage frank and open discussion.

Also, Dr. Becker largely ignores the advice that he solicits from staff. And in fact, he's gone further than ignoring input; he's discredited his own technical staff outsiders. On several occasions, Dr. Becker has stated that his department has little ability to conduct epidemiological studies. For example, in defending his decision to cancel the investigation in Lompoc, Dr. Becker stated that OEHHA lacked epidemiologic expertise to do such an investigation.

I worked for the Air Pollution Epidemiology Unit in OEHHA. My former supervisor is an internationally known air pollution epidemiologist. Yet, when OEHHA was given an Air Resources Board-funded air pollution epidemiology study to review, Dr. Becker sent the report to an epidemiologist in the Department of Health Services, along with a letter explaining that we didn't have anyone proficient in air pollution epidemiology to review it.

Dr. Becker does not trust the staff of OEHHA because his agenda is contrary to the staff's desire to conduct science in the interest of public health. Dr. Becker's failure to trust his staff has been a particularly lethal flaw for a high executive in our organization.

In OEHHA, the scientists are specialized in the areas of cancer, reproduction, risk assessment, regulatory matters, pesticides, air pollution, ecological effects, and modeling, to name just a few. This diverse combination of

talent is part of the reason why OEHHA is capable of scientific excellence as shown by our reputation.

It isn't realistic to expect OEHHA's Director to be an expert in each of these areas, but that is why trust in and reliance on staff expertise so critical.

Dr. Becker's agenda is not compatible with the mandate of OEHHA. And it is vital that the people of the State of California have an objective, scientific evaluation of hazards to public health and the environment.

I ask you to take a first step in removing the politics from the science. I ask you to deny Dr. Becker's confirmation as Director of the Office of Environmental Health Hazard Assessment.

CHAIRMAN LOCKYER: Thank you.

FROM THE AUDIENCE: Were you going to wrap up?

CHAIRMAN LOCKYER: I was hoping to, unless there's some --

FROM THE AUDIENCE: I was just going to ask, because I have traveled 420 miles.

CHAIRMAN LOCKYER: I was going to ask if there's someone whose schedule is impacted in a way that would make it impossible to submit either written commentary or be with us at some future time.

DR. BECKER: We have, please, if you would, Mr. Chairman, Dr. Jim Seiber, who has traveled a great distance as well.

CHAIRMAN LOCKYER: Let's have both of you try to summarize, if you can. Or point us in the right direction for

our subsequent discussions.

DR. BECKER: Dr. Seiber, please.

DR. SEIBER: Senator Lockyer and Members of the Committee, thank you for your time. My name is James Seiber. I'm Director of the Center for Environmental Sciences and Engineering at the University of Nevada, Reno, and also Professor Emeritus at UC Davis.

And I'd like to provide a positive perspective on Dr. Becker's confirmation through a quick status report on the Risk Assessment Advisory Committee, and of the participation of OEHHA and Dr. Becker in that process.

I chaired the RAAC Committee, Risk Assessment Advisory Committee, which, as you may know, was mandated by SB 1082. And its purpose was to provide an external scientific peer review of the risk assessment practices of Cal-EPA.

The Committee was convened in 1995. It consisted of 34 scientists from a variety of organizations and a variety of backgrounds. It took place largely in 10 public meetings, all of which were noticed and open for public comment. Many members of the public provided that testimony.

And it culminated in about a 200-page report, called "The Review of the California EPA's Risk Assessment Practices, Policies and Guidelines."

CHAIRMAN LOCKYER: We were told earlier by one of the supporting witnesses that they thought it was a constructive series of recommendations, and that Dr. Becker had integrated most of them into the practices and policies of the Department.

Is that your understanding?

DR. SEIBER: Well, absolutely. Dr. Becker assisted the Committee in terms of clarifying the charge, providing information. Attended most of the meetings, and in fact, allowed us to complete the process in what almost has to be a world record time of about 12 or 14 months, given the number of people and the number of public meetings.

And certainly, I'd be happy to continue on. The Committee found that Cal-EPA's risk assessment, as many of you probably know, is a leading -- leading operation in the United States. It's based upon sound science consistently applied across boards and departments, and in general harmony with the practices of Federal EPA and the National Academy of Sciences.

The Committee concluded that Cal-EPA's risk assessment products are of good quality from the perspective of scientific credibility and professional practice, and that the professional staffs of Cal-EPA that are involved in risk assessment, mostly at OEHHA, about 100-plus strong, are among the leaders in the field of risk assessment, and clearly very dedicated to their professions.

The Committee made several recommendations --

CHAIRMAN LOCKYER: When was --

Dr. SEIBER: -- about 140 total.

CHAIRMAN LOCKYER: When was it released?

DR. SEIBER: When was it released? October, 1996. And I think the first meeting was in May or June of 1995, Senator. And of course, there's public review --

CHAIRMAN LOCKYER: A year's work or so.

DR. SEIBER: -- as part of the process.

Among the 140 recommendations, 11 general recommendations were made. Peer review, for example, was emphasized as a primary way to ensure that good science be incorporated in the risk assessment products of Cal-EPA.

The Committee also recommended greater efforts toward coordination and harmonization with federal counterparts, and Dr. Becker mentioned multi-media exposure, which is definitely the way toxicology is going now and requires very close collaboration with federal counterparts.

Several years ago, I think we could say that Federal EPA lagged significantly behind California's agencies in areas such as air toxics and pesticide regulation. The gap has closed considerably; harmonization is very much needed. And this is an effort that the Committee recommended for improvement.

The Committee pointed out that risk assessment is a young and still evolving field. I'm not sure how many of you realize that the federal document that we use for guidance in risk assessment was just issued in 1983. So, we've got about a 13-year or 14-year experience with this science.

It's often a contentious field, and it requires strong leadership in order to make the kind of adjustments that are recommended in the Committee's report.

Continuous review and improvement of the type that was mentioned in connection with the lead document to reflect the latest scientific thinking and methodologies, for example, are very important.

The Committee also recommended that risk

assessors, risk managers, and the affected public and private organizations be brought in together early in risk assessment and discussion. And this is a fairly new proposal. So, once again, having leadership to make those kind of adjustments, I think, is critical for the future of risk assessment.

Now, as a follow-up to the RAAC report, Governor Wilson signed an Executive Order that all Cal-EPA boards and departments develop implementation plans. Dr. Becker is leading that effort. He's asked on the -- he's asked the RAAC core committee to assist him in that, and we've had two meetings already, one of which was a public meeting. And I can say that, in general, the RAAC core committee members were quite impressed with the progress toward implementing the RAAC recommendations, which Dr. Becker and the staffs of OEHHA and the Cal-EPA boards and departments have presented.

The process, in other words, is moving forward, and communication appears to be quite good.

In summary, the Risk Assessment Advisory Committee was a successful process, producing in just over a year a consensus template for improving risk assessment in the State of California in the future.

I'd like to emphasize the important contributions made by the OEHHA leadership and staff to the RAAC process, including an extraordinary commitment of time and effort. From the evidence I've seen, the commitment has carried through to the implementation phase, which is now occurring under Dr. Becker's leadership.

Thank you very much.

SENATOR LEWIS: Thank you very much.

Senator Ayala.

SENATOR AYALA: I just want to make an observation.

How can you say that Cal-EPA is the leading agency in the country when they have implementation of policies like the infamous records retention policy? How can that be considered leaders in the area of our environment?

DR. SEIBER: I was speaking toward the practice of risk assessment, Senator. I think in that regard, Cal-EPA can -- is second to none, including Federal EPA, in terms of expertise and the ability to produce documents that are useful and helpful in safeguarding public health.

SENATOR AYALA: It's just my opinion that if they implement such policies as the records retention policy, they're not all that good, in my opinion.

DR. SEIBER: Senator, the record retention policy was kind of an internal thing which, of course, I know very little about and can't comment on.

SENATOR LEWIS: Thank you very much.

DR. BECKER: Mr. Vice Chairman, before we turn it over, I have one other witness that I think is leaving on vacation and may not be able to -- she will be very brief after Mr. Raugh, please.

SENATOR LEWIS: Fine.

State your name, please.

MR. RAUGH: My name is George Raugh. I'm the President and the co-founder of Volunteers for a Healthy Valley,

which is a citizens health organization in Lompoc, California.

We have been organized there for about five years. We have significant health problems in Lompoc, and we believe it's because we're living down wind of massive pesticide applications.

I was also appointed several years ago by the Department of Pesticide Regulation to serve on the Ag. Urban Interface Task Force. I was one of two community members appointed to try to deal with these issues.

This is an issue that, according to Paul Gosselin, with the Department of Pesticide Regulation, is a growing issue, an issue of deep concern throughout California as more and more people are moving into areas next to a lot of intensive spraying.

For the last five-and-a-half years, we've been working on this issue. For last two years, however, we have been dumped into the swamp, into a black hole of nothingness. And I'm sorry to say that there is only one man responsible for the last two years of delay in which nothing has been done in our community except the suffering that continues. The regulators are all waiting. The Department of Pesticide Regulation is waiting. Everyone is waiting for two years on Mr. Becker.

I want to go briefly into the history -- and I'll make it brief -- of OEHHA coming into our community.

My first contact with Mr. Becker was in I believe it was March or thereabouts of 1995. It was a conference call in which he guaranteed me that OEHHA was coming to our community

and they were going to give us independence and expertise. I heard these words three times, and I thought, "me thinks he protests too much." Independence, expertise. Independence, expertise. That's what we were guaranteed.

One month later, in April, '95, we held a large public meeting. And I want you to understand that hundreds come to the meetings in Lompoc. It's a small town. There is a great concern there.

The OEHHA team came down. Dr. Becker headed this thing up from the get-go. I don't care if he was Deputy Director, Director, Schmarector, whatever, he was head of this project.

In April, '95, he spoke to our community. He guaranteed us of all good intentions that OEHHA had in examining this problem. They were going to look at our health problem. It was only anecdotal. It was only people complaining. Let's find out.

My wife, among many others, came up to me afterwards and said, "That man sounds sincere." After waiting for years and nothing happening, she and others felt very hopeful. We'll see, I thought.

In July of '95, it's only few months later, at OEHHA's request, I set up a number of interviews with Lompoc residents, about 15 or 20 people, who feel that their illnesses, that only occurred after moving to town, were primarily from the pesticides, or at least certainly they had illnesses that could not be accounted for.

An OEHHA team came down, all scientists. None of

them are here. Dr. Becker did not come down. We had an epidemiologist, a medical doctor, and two toxicologists; the PETS team, they're called, Pesticide Environmental Toxics Section, under Dr. Anna Fan.

They came down to Lompoc, and they spent two full days interviewing people. They heard many stories. Mostly they heard about respiratory illnesses, and they also heard about neurological problems.

They left our community, and I remember that Dr. Holtzer, the medical doctor on the team, was obviously skeptical. He let us know he had heard these problems in other communities. People have respiratory and neurological problems in many communities.

Approximately a month or two later, after examining hospital discharge data -- this is quantifiable, hard data. It's on the record. There's nothing you can do either way to change it; it's there -- he found, working with others in OEHHA, that we had astronomical rates of asthma and bronchitis, just as we had been claiming.

And I'm talking about hospitalized. If you know people with asthma or bronchitis, they never go to the hospital. You'd have to be pretty ill before you're admitted with that cause. If you're admitted to the emergency room, it's still not in the hospital data. You have to be admitted into the hospital itself.

Dr. Holtzer flipped, I guess is the word we could use. He couldn't believe it. He became, in his words later on, a convert. He was skeptical. He's a very conservative

physician scientist. He couldn't believe what he saw in the data. Alarm bells went off.

He ran and took the data to this man sitting next to me, after they had worked up some of the computer modeling in order to compare it to nearby communities. He brought this data to the man sitting next to me, and he was told not to deal with it. He was essentially told to put it away. He was told not to talk to anybody about it. He did not talk to our public health officer.

I had been calling, working with OEHHA scientists myself on this issue, and they refused my phone calls. They referred me to Dr. Becker, who referred me back to Dr. Anna Fan, who referred me back to Dr. Becker.

That was it. The black hole had begun. That was in August, '95, according to a letter that Senator O'Connell wrote after talking to Dr. Holtzer, that the essential work-up of this famous Lompoc hospital discharge study was completed. It is sitting here in Sacramento on a spreadsheet.

The evidence is, we have double the asthma-bronchitis of all surrounding communities.

Now, did that get into this so-called study, that was apparently authored, but not signed by anyone, but apparently authored by Dr. Becker and his underling, Dr. Siegel.

Dr. Holtzer refers to it in his letters as the Siegel -- or the Becker-Siegel document. There's a cover letter signed by Becker, but that's it. It's not signed.

As you may well know, the scientists those PETS

scientists who came to Lompoc, who talked to us, who worked on this, they did not sign it, and they refused to sign it, and they refused to come to the public meeting, and they wouldn't defend it.

Another scientist from OEHHA who was not working on the study but is quite conversant with it, Dr. Robert Howd, has a letter, which I have -- he wrote a letter which I have -- saying, do not expect scientists to defend this study; they would not.

In here there is no word about the these findings of respiratory -- you know, I am still incredulous. If anybody that cared at all about public health were at the head of any agency and saw this data, alarm bells would be ringing. They would be calling the staff in. Come on, everybody. They would call in DHS. Let's look at this. Double asthma-bronchitis, what's going on here?

Instead, it was muzzled and put away. Why? I don't know why.

This black hole, by the way, is continuing to this day. Now, as you've heard, we've had to go through this Study Number Two. They had to write a protocol.

I'm not a scientist. You Senators are not scientists, I'm sure. But if I put a few jars with marbles in front of you, red and blue marbles, you'd be able to count them, just as I would.

That's essentially what this study is, it's counting the Marbles. How many asthmas in this community? How many in that community? Doesn't take a protocol, as Dr. Mann

has just testified. She talked about it as though you might as well be tying your shoes as far as needing a protocol goes here.

CHAIRMAN LOCKYER: You just gave her a promotion, I think. She hasn't quite finished --

MR. RAUGH: Not quite a doctor, well, she'll make it.

CHAIRMAN LOCKYER: But she's past the tying your shoes threshold, so that's okay, whatever that is.

MR. RAUGH: By the way, the only reason that I can figure that this thing was even reinstituted was the pressure, thank you, to doctor -- excuse me, I just promoted him -- to Senator O'Connell. His office gave a scathing review of this so-called Becker-Siegel study.

I have here four memorandums from the Department of Health Services, all critical and negative, all questioning where does he get his conclusions from, when none of the data lead up to them? It's just incomprehensible.

CHAIRMAN LOCKYER: We may not have those documents for our records, so if you'll make copies?

MR. RAUGH: Sure, I'll be happy to. I would have brought some.

These were the peer reviews. Our group asked that they be peer reviewed when the study came out. These are four very fine scientists that work for the State of California that were all negative.

By the way, I even failed to mention, we have a 36 percent increase over the average in lung cancer in Lompoc. That was not discovered by OEHHA. That was discovered by Debra

Gillis, one of the peer reviewers.

OEHHA had somehow managed to cook the data by putting in an area that was not exposed, and naturally that dilutes the data. I don't want to get too technical. We've had enough science here today, nor am I a scientist. But essentially, it's pretty obvious. You put in an unexposed population. You add them to the exposed, and then you look at it, and you say, no problem.

When Dr. Gillis looked at the people in the Lompoc Valley, down where the exposure is, she found that, indeed, we have a very high rate of lung cancer. And there are other cancers that are higher, but not, quote, statistically significant. That is --

SENATOR AYALA: What do you mean by exposure? From what?

MR. RAUGH: That's an excellent question.

We live in a very narrow, long, valley that only opens to the ocean, so that we live in sort of a bowl. It's enclosed.

SENATOR AYALA: No contiguous cities?

MR. RAUGH: No. Lompoc sits all alone in this valley. It's a town of 40,000.

SENATOR AYALA: Exposed to what?

MR. RAUGH: Upwind of us, there are about five miles of fields that are intensively cultivated with vegetables. And they spray there, according to records from the Department of Health Services and Department of Pesticide Regulation, they spray five to ten -- no, excuse me -- one to two tons of

pesticides a week, 50 or 90 tons a year, year around, in this valley.

It's something fairly new there. It's something that's increasing around the state.

OEHHA began looking here in Lompoc. It's the first kind of large investigation they've done. It's the first investigation, other than MacFarland, that I know about that's really been done on this kind of exposure.

SENATOR AYALA: On that exposure issue, Lompoc was exposed to it? What other areas are included?

MR. RAUGH: Some of the other areas that were compared are exposed; others are not.

SENATOR AYALA: What are not in terms of cities?

MR. RAUGH: They included San Luis County, areas there that would not have the same exposure.

I'd like to add, these are excellent questions, Senator Ayala. But one of the points here was, they were not even asked to find out causation. This study was not intended to find out if pesticides, or anything, lead, you name it, were causing this. Cars. It could be anything.

SENATOR AYALA: What's the population of your town?

MR. RAUGH: Forty thousand.

The first cut here was simply to find out were the residents actually talking about something real? Dr. Holtzer said he'd heard this from many communities, respiratory problems. So, the first cut here, as you might say was, is there a problem?

This so-called study, the Becker so-called study here says there's no problem. Yet, he had this information. He told his scientists to bury it.

I would never have known about this myself if Dr. Holtzer had not quit. As you know, he quit in disgust, largely over this, and also, as he told me later on, because he joined that agency to work on public health, and that's not what he was doing.

This goes beyond, I might add, beyond conservative, or Republican, or anything like that. Dr. Holtzer is a conservative Republican, as he told me. And concluded that statement by saying, but public health is public health.

Now we're told we're going to have to wait until October, '96 to get the results of this study. We've gone through our fancy-schmancy protocol. We're going to have the same study that we had that's sitting somewhere here in a box in OEHHA's offices in Sacramento.

Our small citizens group, with the NRDC, we joined in a suit with them to get this information. Now the race is on, whether Study Number Two is going to come out before the courts release this information to us.

But Dr. Holtzer, indeed, has already told us of these. He says there are 80 cases, and I'm reading his letter to Paul Gosselin of November 15, 80 cases of bronchitis-asthma excess over the year. He extrapolates and sets only hospitalizations that we may have 1600 excess cases in our small community of asthma-bronchitis.

Dr. Becker, in his study here, tries to pass off

the lung cancer as though it were just smoking. With no evidence whatsoever, apparently Lompoc has more smokers.

In fact, when you look at the real evidence from the hospital study, there is a lower evidence of a lung disease called COPD, which is typically a lung disease that smokers get. We have a lower rate of that in our community.

Why do we have such high lung cancer? Why do we have all this asthma-bronchitis? Why do we have all these other problems of headaches and neurological problems, tingling and numbness, so on? These weren't even addressed in this study.

The other aspects of the study, and I can't go into it all here, the cancer and the birth defects, there simply is not enough data in a small community like this to even support a study like that. There was no reason to even do it, unless, as it turned out, we came up with startlingly high numbers, which they did in the lung cancer.

The study is mish-mosh. I question the veracity of Dr. Becker. I question why we have to wait for two years.

Senator Hughes, you talked about people waiting. We are waiting two years. Nothing.

The Department of Pesticide Regulation is sitting in their offices, twiddling their thumbs, waiting for this study to come out.

That concludes my testimony.

CHAIRMAN LOCKYER: Thank you, sir.

DR. BECKER: May I respond just very, very briefly? I'll promise, Senator, I know it's getting very late, so I'll just keep it very brief.

With respect to the issue about the hospital discharge data, I did receive a draft protocol from our staff to look at the hospital discharge data. And that protocol developed by our staff epidemiologist indicated that scientifically meaningful results could not be obtained from that study.

Based upon that conclusion, why do a study? It's like building a house. If you have a protocol -- I mean, if you go out and buy wood, and just start pounding nails in it, the house will fall down.

The protocol is meant to be like the blueprints of the house. If the blueprint holds up to peer review, then you go ahead and build the house. If it doesn't hold up to peer review, you don't. You send it back to the engineer.

Well, that's why we stopped that study, because it did not, by admission of our own scientists, would not yield scientifically meaningful results.

With respect to --

CHAIRMAN LOCKYER: Did you ever find a study that in your view tilted too much toward the conclusion that there wasn't a health hazard, that you insisted somebody rework? Or do you only rework the ones that say there is a public health hazard?

DR. BECKER: We try to make sure that there is balance and objectivity --

CHAIRMAN LOCKYER: Have you ever found one?

DR. BECKER: Senator, please, if you would permit me to answer that.

CHAIRMAN LOCKYER: I want the answer to the question.

DR. BECKER: From the standpoint of objectivity, we try to make sure that all of our studies are objective.

CHAIRMAN LOCKYER: Did you ever find one that your preliminary evaluation or assessment was, it erred on the side of thinking there was not a public health problem, and you said, "I want some more work done here"?

DR. BECKER: Simply, in this case, we said with this case, we need more work done to make sure that we have --

CHAIRMAN LOCKYER: Have you ever found one --

DR. BECKER: -- a solid protocol.

CHAIRMAN LOCKYER: -- that you thought the opposite of? One in your experience in this Department or your prior job?

DR. BECKER: I think with lead, the issue was clear. In the lead health risk assessment --

CHAIRMAN LOCKYER: That's the one you thought that their conclusion was too tilted toward public health concerns?

DR. BECKER: I think from the standpoint of looking at public health concerns from the community level, we needed to look at exposures across all --

CHAIRMAN LOCKYER: So, your answer is, no, you have never found scientific work that you rejected because it claimed there wasn't a public health problem?

DR. BECKER: No, I don't think that's my answer, Senator.

CHAIRMAN LOCKYER: That's the answer I heard from you.

DR. BECKER: What I answered was that in lead, I think, the case was clear.

CHAIRMAN LOCKYER: You said, go back and include new modeling.

DR. BECKER: We needed to look at those exposures. And that was clearly a case where children are exposed.

CHAIRMAN LOCKYER: And you deleted the conclusion of the scientific panel, the preliminary one, that there was a standard, and that it was significantly and frequently violated for young kids.

DR. BECKER: I don't believe I deleted that, no.

CHAIRMAN LOCKYER: Yes, you did. And what was substituted was a very complex matrix that made it difficult to know where the thresholds of public health were crossed.

Now, let's not debate the lead. My question is, have you ever had scientific studies presented to you, and you said, "You're not sufficiently concerned here about public health risks. I want new work done."

Have you ever done that one time?

DR. BECKER: I'm sure that I have, Senator.

CHAIRMAN LOCKYER: Next time we have you here, why don't you bring me the documents that show?

DR. BECKER: I'd be glad to.

MR. RAUGH: Could I simply ask why a protocol is needed? Why it is not meaningful when a community has double

the asthma, bronchitis and lung cancer to boot? Do we dismiss that? Do we throw it into a black hole?

Is that sound science? Or is that a lot of sound to go along with your science?

CHAIRMAN LOCKYER: Sir.

Make your comment, that's fair.

DR. BECKER: Thank you.

One other thing with respect to Dr. Holtzer. He was not told not to communicate with the community health officer. He was told exactly the opposite. His supervisor was told to make sure that he communicate that to Dr. Holtzer, and that communication occur.

The supervisor has admitted that he was told to communicate that to Dr. Holtzer, and the supervisor has accepted responsibility for not doing that.

The same OEHHA scientists that you, Mr. Raugh, criticized for not picking up on some of the lung cancer problems were the ones who were doing the hospital discharge data. That's why it's important to have good protocol, and that's why it's important to have external scientific peer review, to make sure that we have scientifically meaningful results.

Scientists can make mistakes, too. It's important to have other scientists look at their work.

MR. RAUGH: Protocols don't obviate mistakes.

DR. BECKER: I never told scientists to bury the information at all. Scientists themselves, because it was preliminary information, felt uncomfortable about how to include

this information in this draft report.

I want to let you all know that this is a draft report that we released for public review, just like Mr. Raugh has given us, and public comment, and also scientific comment, to make sure that we can get it on the mark when we do our final analysis.

This is part of the scientific process. This is what we're following.

I'm glad and pleased to say that we're back on track with respect to analysis of the hospital discharge data. We have had 10 independent, external scientific peer reviewers look at the protocol, make some suggestions. We've modified it. We've held a community meeting down in Lompoc. And most community members support that study. That study's under way, and we intend to conduct that study and yield scientifically meaningful results, which will provide answers to Mr. Raugh and other people's questions in that community.

It's important to have scientifically meaningful results so that it can be interpreted and acted upon.

I would like to close with one other thing. In the interim, a scientific study has been conducted by Dr. John Peters of the University of Southern California. He looked at school children at 12 communities throughout Southern California. Lompoc is one of the communities that he looked at. And this is what he found, and this was a scientific study funded by the Air Resources Board.

He found that the prevalence rates in Lompoc among the 12 communities, Lompoc had the lowest prevalence rate

of asthma in school children; the third lowest rate, cough and other chest problems; and was in the middle for wheeze and bronchitis.

Lompoc was only elevated -- this is what Dr. John Peters of USC found -- was only elevated among the other communities for pneumonia, which may be of bacterial or viral origin. It was primarily in seventh graders, which also had a high prevalence of bronchitis and coughs.

Another community of interest is Santa Maria, which is very close to Lompoc that was studied. It has similar air quality, according to this study, to Lompoc. In relation to Lompoc, Santa Maria had a much higher ranking and prevalence of asthma. It was the fourth highest out of twelve. Cough, the second highest; and chest problems, the highest.

So, I think it's very important to look at these communities, and look at scientific studies carefully. This is what Dr. Peters' study says, that Lompoc is in the lower half or the lower third in rate of prevalence of these lung problems.

Our hospital discharge data will help you and help our community members understand whether or not there is a risk. But Dr. Peters' study also an important and a scientifically valid study. He is well respected in the epidemiological field, and is a member of our Carcinogen Identification Committee, part of our Science Advisory Board.

CHAIRMAN LOCKYER: Senator Ayala.

SENATOR AYALA: I'd just like to ask the doctor, are you suggesting that Lompoc has a lower rate of health problems than most cities in California?

DR. BECKER: I'm not suggesting that. What I'm saying is that there's a study by Dr. John Peters of USC and other folks, funded by the ARB -- partially funded by the ARB, as I understand it, maybe fully -- which indicates that among 12 communities in Southern California, Lompoc had the lowest prevalence of asthma among school aged children in one of those 12 communities, and the third lowest of cough and other chest problems, and was in the middle for wheeze and bronchitis among those 12 communities that were studied.

MR. RAUGH: Senator Ayala, could I address that, please.

SENATOR AYALA: Sure.

MR. RAUGH: This another -- perhaps this time it's inadvertent -- but it's another piece of the misinformation from Dr. Becker.

I've talked, I've spent over an hour talking -- first of all, the study has not been released publicly, but I did speak to one of the scientists at the ARB who has worked on or seen some of the data.

The children, it is true that the children studied have lower rates than other communities, the study of Lompoc.

However, I am aware of where they did the testing and what children they were testing. They were not the children -- if you remember when I explained -- that lived down in the valley. They are children that live up on the mesa primarily, which is up, out of the pesticide exposure, and northwest winds sweep across from the ocean. There is no pollutants between

them and the ocean.

CHAIRMAN LOCKYER: You're talking about the Lompoc control group?

MR. RAUGH: Yes, for the USC study.

CHAIRMAN LOCKYER: That wasn't representative of the Lompoc?

MR. RAUGH: That's true, and it was not aimed at that group at all. In fact, when that study began, there had been no controversy in the community with regard to pesticides. It's apples and oranges, in other words.

Mr. Becker wouldn't know that, and he shouldn't have brought it up without knowing it. It's always, always with him --

CHAIRMAN LOCKYER: We're going to have to conclude today. We won't go to a vote today.

DR. BECKER: May I please, with your indulgence, it would be very short. One witness who will be leaving on vacation.

CHAIRMAN LOCKYER: They can submit their comment in writing, I think, if they want to make further comments.

DR. BECKER: Thank you, Senator.

CHAIRMAN LOCKYER: Let me just tell you what the ground rules are, Dr. Becker.

This feels like it's only a good start in understanding this. A lot of that is because much of the dispute is technical and scientific, and it's hard for lay people to, perhaps, make some fair assessment of those contentions.

I would only summarize by saying that for me, I don't see a smoking gun, but I see a lot of empty bullet casings. And I want to do some more work to try to get to the truth, and you'll have plenty of time to have additional witnesses, either oral or written.

I would ask anyone else that's here, that because of our time problems, we have quite a bit of work to do still, that you consider submitting any comment in writing. If you've heard something today that you would agree or disagree with, please let Mr. Gordon, if you'll raise your hand. Alan Gordon is the member of the Senate Office of Research staff that collects opinions and commentaries.

And we'll get back to at that a subsequent hearing.

SENATOR BRULTE: So, what will occur the next time we convene?

CHAIRMAN LOCKYER: I think we're going to hear more testimony.

What I'm hoping will occur is that we can figure out how to sift through it and focus it better, because there was a lot of different kinds of materials today, that it would be useful, I think, if we --

DR. BECKER: Perhaps our staff can get together and try and help sort this out. I would be glad to volunteer our staff in that regard.

CHAIRMAN LOCKYER: Okay.

DR. BECKER: One request, Mr. Chairman and fellow Senators. I do have a family problem that I need to leave

tonight for. I would just ask that we not continue this next Monday, if that would be possible.

CHAIRMAN LOCKYER: It won't be next week. We've got other hearings scheduled. It'll be a while.

DR. BECKER: Thank you very much.

[Thereupon. This portion of the Senate Rules Committee hearing was terminated at approximately 5:26 P.M.]

--ooOoo--

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